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COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

ORIGINAL

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 Harmar Township v. Norfolk :  
 Southern Railway Company. :  
 Complainant wants the company to :  
 take responsibility for the :  
 maintenance of a Pedestrian : Docket No. C-20030526  
 crossing over the tracks of :  
 Norfolk Southern Railway Company, :  
 per report and order of the :  
 Public Service Commission of :  
 Pennsylvania, Application Docket :  
 Number 21878-1930. Initial hearing. :  
 -----X

Pages 1 through 143

Hearing Room #1  
Pittsburgh State Office Bldg.  
300 Liberty Avenue  
Pittsburgh, Pennsylvania

DOCKETED

MAR 03 2004

Thursday, January 29, 2004

Met, pursuant to notice, at 10:00 a.m.

BEFORE;

John H. Corbett, Jr. Administrative Law Judge

APPEARANCES:

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P R O C E E D I N G S  
ADMINISTRATIVE LAW JUDGE JOHN H.

1  
2 CORBETT, JR: We will open the record at this  
3 time. This is the time and place scheduled for a  
4 hearing on the complaint of Harmar Township versus  
5 Norfolk Southern Railway Company. This complaint is  
6 docketed at C-20030526. I am administrative law judge  
7 John Corbett and I am assigned to hear this case and  
8 render a decision.

9 We have in the hearing room this morning Shawn  
10 Gallagher representing Harmar Township, Benjamin  
11 Dunlap representing Norfolk Southern Railway, David  
12 Salapa representing PUC Bureau of Transportation and  
13 Safety, and Jason Sharp, representing Pennsylvania  
14 Department of Transportation.

15 Is there anyone that is appearing for a party  
16 today that I have not mentioned? Then are there any  
17 preliminary matters that we need to address before  
18 beginning testimony this morning? Then, Mr. Gallagher,  
19 we will begin with Harmar Township. Do you have a  
20 witness to present?

21 MR. GALLAGHER: I do, Your Honor.

22 ROBERT W. SEIBERT, JR.,  
23 having been duly sworn, testified under oath as  
24 follows:

25 DIRECT EXAMINATION

1                   JUDGE CORBETT: Please have a seat. Give  
2 us your full name and spell your last name for the  
3 court reporter.

4                   MR. SEIBERT: Robert W. Seibert, Jr.,  
5 S-e-i-b-e-r-t.

6 BY MR. GALLAGHER:

7                   Q        Good morning, Mr. Seibert. I want to ask  
8 you a few background questions first. Are you a  
9 resident of Harmar Township?

10                  A        Yes, I am.

11                  Q        How long have you resided in the township?

12                  A        I have been a life long resident of  
13 Harmar Township.

14                  Q        Do you also work in the township?

15                  A        Yes, I do.

16                  Q        Where is your business?

17                  A        My business is approximately a mile from  
18 the crossing that is under the hearing today.

19                  Q        Is it located off of Freeport Road?

20                  A        Yes.

21                  Q        Do you pass the subject crossing  
22 frequently?

23                  A        I would say in excess of a half a dozen to  
24 a dozen times a day, yes.

25                  Q        And do you serve in the township in any

1 official capacity?

2 A Yes. I am an elected public official. I  
3 will be in my fifth year, my sixth year as chairman of  
4 the Public Safety Committee and vice chairman of the  
5 Board of Supervisors.

6 Q Do you know why we are convened here  
7 today?

8 A Yes. We are here today to see if we can  
9 enforce what we believe is an existing order from the  
10 Public Utility Commission about maintaining the  
11 crossing at the Wenzel Drive and Freeport Road  
12 intersection.

13 Q If you could turn to tab 1 in that book,  
14 do you have a book in front of you?

15 A No, sir, I do not. I do now. Thank you.

16 JUDGE CORBETT: For the record, so the  
17 record is clear, counsel for Harmar Township has  
18 given to the court two copies of a binder and  
19 distributed to the parties, including myself, one copy  
20 of the binder, including exhibits for this morning.  
21 Those exhibits are marked and identified 1 through 12,  
22 Mr. Gallagher?

23 MR. GALLAGHER: Through 16.

24 JUDGE CORBETT: I am sorry. I didn't  
25 see underneath. Exhibits 1 through 16.

1 (Whereupon, Harmar Township Exhibit No. 1 was marked  
2 for identification.)

3 BY MR. GALLAGHER:

4 Q Have you ever seen this map before?

5 A I have.

6 Q Do you know who prepared it?

7 A Yes. We directed our engineering company,  
8 Senate Engineering, to prepare this Guys Run Road map  
9 for this hearing purpose today.

10 Q And does this map fairly depict the  
11 subject area of the crossing?

12 A Yes, it does.

13 Q And the approaches to the crossing?

14 A Yes, it's very complete.

15 Q And the businesses, is that a fair  
16 depiction of the businesses located around the area?

17 A Yes, it is.

18 MR. GALLAGHER: We would like to move into  
19 the record Exhibit No. 1.

20 JUDGE CORBETT: Any objection? Hearing  
21 no objection, it will be so admitted.

22 (Whereupon, Harmar Township Exhibit No. 1 was  
23 admitted into evidence.)

24 BY MR. GALLAGHER:

25 Q You mentioned an order. Is that what you

1 believe gives the township the right to ask the  
2 Norfolk Southern to maintain the subject crossing?

3 A Absolutely.

4 Q Do you know why Norfolk Southern has  
5 refused to maintain the crossing?

6 A Norfolk Southern has indicated to the  
7 township that this crossing has been abolished and we  
8 do not agree with that position whatsoever. We  
9 believe that this order is ongoing and should be  
10 enforced.

11 Q I want you next to look at tab 2, 3, and  
12 4. We will go through one at a time.  
13 (Whereupon, Harmar Township Exhibit No. 2 was marked  
14 for identification.)

15 Tab 2 is a petition from the Pennsylvania  
16 Railroad Company. I am going to read some portions of  
17 it and ask you a couple of questions. This is an  
18 application regarding three crossings in the area in  
19 1929. The very first paragraph -- Sorry, the  
20 captioning paragraph, "In the matter of the  
21 application of the Pennsylvania Railroad Company for  
22 a Certificate of Public Convenience evidencing the  
23 Commission's approval of the abandonment of public  
24 vehicular crossing immediately west of Harmarville  
25 passenger station, Harmar Township, Allegheny County,

1 and continued maintenance at that point of a four foot  
2 pedestrian crossing; evidencing the Commission's  
3 approval of the adandonment and closing of existing  
4 vehicular and pedestrian crossing approximately 250  
5 feet westerly from the present crossing and evidencing  
6 the Commission's approval of the dedication of an  
7 approximate 33 foot strip of property to Harmar  
8 Township, Allegheny County, of which petitioner is to  
9 construct a 20 foot roadway of granulated slag. Of  
10 the three crossings mentioned therein, the first  
11 crossing is the Guys Run Road crossing?

12 A Yes.

13 Q And that last crossing, this new crossing  
14 that I referenced, would that be the -- if you can  
15 refer to Exhibit 1, the map, would that be the Wenzel  
16 Crossing?

17 A Yes, it would.

18 Q And who is this petition signed by?

19 A The petition is signed by the Pennsylvania  
20 Railroad Company.

21 (Whereupon, Harmar Township Exhibit No. 3 was marked  
22 for identification.)

23 Q If you could take a look at tab 3, please.  
24 This was the relief that was granted from the  
25 Public Service Commission on the petition that we just

1 looked at. In the matter of the application of the  
2 Pennsylvania Railroad Company, under section 5 of  
3 article III, -- bear with me if I miss some of this  
4 because the print is a little bit worn -- and sections  
5 12, 18, and 19 of the Public Service Company Law, for  
6 the approval of the alteration of an existing crossing  
7 at grade from a vehicular to a pedestrian crossing at  
8 a point where the track of said railroad company  
9 crosses a township highway in Harmarville Township,  
10 Allegheny County, Pennsylvania, immediately west of  
11 Harmarville passenger station, said railroad company;  
12 and also for the abolition of another crossing at  
13 grade, where township highway crosses tracks of the  
14 said railroad company approximately 850 feet east of  
15 Harmarville station; and also for the construction of  
16 the crossing at grade point where now connecting  
17 highway will cross tracks of the said railroad  
18 company, and the tracks of the Allegheny Street  
19 Railroad Company, approximately six hundred feet east  
20 of Harmarville Station. There are three crossings  
21 referenced in here. Is the first crossing mentioned,  
22 is that also the Guys Run Road crossing?

23 A Correct.

24 Q Comparing those two documents, do you see  
25 any alternative difference?

1                   MR. DUNLAP: I object to this. The  
2 documents speak for themselves.

3                   JUDGE CORBETT: Sustained.

4                   (Whereupon, Harmar Township Exhibit No. 4 was marked  
5 for identification.)

6                   Q           In the Public Service Commission  
7 application there is a Report and Order which is on  
8 the next page. If you could turn to the second page  
9 of the order and look at the very first paragraph,  
10 "the Commission from consideration of the record finds  
11 and determines that the approval of the application in  
12 accordance with plan dated January 4, 1929, and  
13 identified as Exhibit 3 at hearing of May 15, 1950, as  
14 modified with respect to lowering the tracks of  
15 Allegheny Valley Street Railway Company; the elevation  
16 of the concrete paving; State Highway Route 70, and  
17 agreement of parties, and the issuance of a  
18 certificate of public convenience in evidence thereof,  
19 subject to the following conditions is necessary and  
20 proper for the service, accommodation, and convenience  
21 of the public."

22                   Is there two -- well, there is 10 conditions that  
23 go to the approval of the certificate. In particular  
24 importance, I want to point out 3 and 7. The third  
25 one states "that the crossing immediately west of

1 Harmarville Station altered and changed from that  
2 vehicular to pedestrian crossing shall be planked or  
3 paved for a width of four feet." Is that the Guys  
4 Run Road crossing?

5 A Yes, it is.

6 Q If you look at the 7th condition, it  
7 states that the maintenance of the new crossing over  
8 the tracks of the Pennsylvania Railroad Company as  
9 well as pedestrian crossings shall be born by the  
10 Pennsylvania Railroad Company. As relates to these  
11 conditions, have these been fulfilled?

12 A They had at one time maintained that  
13 section, yes, and their predecessor - I am sorry -- I  
14 think Conrail -- let's be clear -- Conrail, after the  
15 Pennsylvania Railroad Company did in fact maintain  
16 that for an extended period of time.

17 Q Is it currently maintained?

18 A No, it is not currently maintained.

19 Q And does the term alteration or abolition  
20 and abandonment mean the same thing to you?

21 MR. DUNLAP: I object. They are legal  
22 terms and this gentleman is not qualified to be an  
23 attorney.

24 JUDGE CORBETT: Sustained.

25 MR. GALLAGHER: Your Honor, I'd like to

1 move Exhibits 1, 2, 3 and 4 into evidence.

2 JUDGE CORBETT: Any objection?

3 MR. SALAPA: No, Your Honor.

4 JUDGE CORBETT: Hearing no objection, they  
5 will be so admitted.

6 (Whereupon, Harmar Township Exhibits 1, 2, 3, & 4 were  
7 admitted into evidence.)

8 (Whereupon, Harmar Township Exhibits 5A, B, C, & D  
9 were marked for identification.)

10 Q Mr. Seibert, can you please turn to tab 5  
11 in that book in front of you and take, if you can,  
12 take a look at these pictures.

13 A Yes, I am familiar with the facility.

14 Q Can you indicate on maybe it would be  
15 easier if you took the map out and just placed it in  
16 front of you. I am sorry, Exhibit 1.

17 A I have done so.

18 Q Can you describe where this area is on the  
19 map or can you point to it and make a notation?

20 A Yes. On the map this would be in a  
21 direction towards the Hulton Bridge. It shows on here  
22 approximately 1,283 lineal feet and it would be at the  
23 entrance of the Allegheny Valley Joint Sewer  
24 Authority.

25 Q Can you mark on the map, Exhibit 1, the

1 Allegheny Valley Joint Sewer Authority crossing?

2 A I misread. It was 1,012 lineal feet. I  
3 have circled that on the map; correct.

4 Q Now, looking at first picture 5 A, can you  
5 describe where this picture is being taken from?

6 A The picture is being taken from Route 28,  
7 which was Legislative Route 1001 facing Allegheny  
8 Joint Sewer Authority which is immediately adjacent to  
9 the Allegheny River.

10 Q You have been to this facility before?

11 A Dozens of times.

12 Q And is this a vehicular crossing?

13 A It is both vehicular and pedestrians also  
14 use the crossing. In fact, there is a mailbox that  
15 they go across the street -- there is a mail box that  
16 they go over and access it.

17 Q Are there any crossing gates for vehicles?

18 A No, there are not.

19 Q Would residences on Wenzel Drive in the  
20 township be able to access this crossing?

21 A No, they would not because the river has a  
22 canal and lagoon area that separates this crossing  
23 area from the Wenzel Drive area.

24 Q And if you could turn to the next page  
25 here. Do you recognize this?

1 A Yes, I do.

2 Q Where would you be standing? Describe the  
3 view.

4 A You would be standing facing the Wenzel  
5 Drive access road from Route 28 and Legislative Route  
6 1001 across from the St. Francis Church.

7 Q And the next picture?

8 A That would be the church that I just  
9 referenced and that would be the entrance way to  
10 Wenzel Drive.

11 Q Does this fairly depict the sight distance  
12 at the Allegheny Valley Joint Sewer Authority  
13 crossing?

14 A This is a different crossing from the  
15 Allegheny Valley Joint Sewer Authority. I might be on  
16 the wrong exhibit.

17 Q Five C, I am sorry.

18 A I was just referencing 6 A, so I was on  
19 the wrong exhibit. Five C, I would like to restate my  
20 testimony. That would be from that crossing at  
21 Allegheny Valley Joint Sewer Authority looking toward  
22 Hulton Bridge Drive. I am afraid to reference east or  
23 west. I am not sure which direction.

24 Q Which way do the trains travel?

25 A They travel in both directions.

1 Q And can you please look at 5 D?

2 A Okay.

3 Q Is that a fair depiction of the railroad  
4 crossing at the Allegheny Valley Joint Sewer  
5 Authority?

6 A Yes, it is.

7 Q Have any accidents ever occurred at that  
8 facility at that crossing?

9 A To my personal knowledge, numerous, yes.

10 Q Pedestrians or vehicular?

11 A Vehicular. And I am sure the pedestrian  
12 information is falable from PennDOT, that they are  
13 having people injured at this crossing, correct.

14 MR. GALLAGHER: Your Honor, I'd like to  
15 move the pictures at tab 5 as collective Exhibit 5  
16 into the record.

17 JUDGE CORBETT: Any objection?

18 MR. SALAPA: No, Your Honor.

19 JUDGE CORBETT: Hearing no objection, it  
20 will be so admitted.

21 (Whereupon, Harmar Township Exhibit 5A, B, C & D were  
22 admitted into evidence.)

23 (Whereupon, Harmar Township Exhibit No. 6 was marked  
24 for identification.)

25 Q Turn to tab 6, please, Mr. Seibert. If

1 you could take a look at those pictures, this is all  
2 in one general area; right?

3 A Yes, sir. I was confused a moment ago.  
4 This is fairly close to the other area.

5 Q Where is this located on the map?

6 A This would be located 1,283 lineal feet  
7 from the pedestrian crosswalk across from the St.  
8 Francis Church. It is located at the intersection of  
9 Wenzel Drive and Route 28, which is Legislative Route  
10 1001.

11 Q Looking at picture 6 B, where would you be  
12 standing?

13 A You would be standing at Wenzel Drive. The  
14 state has a piece of property which is a park setting  
15 that has a public lawn, so you would be standing on  
16 Wenzel Drive immediately adjacent to the state  
17 property and across the rail tracks would be the St.  
18 Francis Church.

19 JUDGE CORBETT: The launch, you are  
20 referring to the boat launch?

21 THE WITNESS: Yes. It is owned by the  
22 Commonwealth of Pennsylvania.

23 Q This is just a vehicular crossing?

24 A It is primarily a vehicular crossing,  
25 correct. There is no crossing established on Old

1 Route 28, legislative 1001 at this point.

2 Q Are there traffic lights at this location?

3 A No, there are not.

4 Q Is there a crosswalk?

5 A No, there is no crosswalk at that  
6 location. However, at the pedestrian crossing that we  
7 are here for, there is a crosswalk. There are signs  
8 there. There are walk and don't walk signs. It is  
9 regulated there and it's safe at that location, but  
10 this location is not safe to cross the highway. You  
11 would be taking your life in your hands at this  
12 location.

13 Q Take a look at picture 6D. Is this the  
14 intersection of Wenzel and Freeport Road?

15 A That is correct.

16 Q Is there a sidewalk along Freeport Road on  
17 the Wenzel Drive side?

18 A No, there is no sidewalk and there is no  
19 possibility of installing one there.

20 Q Is there any sidewalk on the other side of  
21 Freeport Road?

22 A There is not a sidewalk. There is a dirt  
23 kind of path at one part but it's unsafe and it is not  
24 advisable to use it.

25 MR. GALLAGHER: Your Honor, the township

1 would like to move the pictures at tab 6 into  
2 evidence.

3 JUDGE CORBETT: Any objection?

4 MR. SALAPA: No, Your Honor.

5 JUDGE CORBETT: Hearing no objection, it  
6 will be so admitted.

7 (Whereupon, Harmar Township Exhibits 6A through 6D  
8 were admitted into evidence.)

9 (Whereupon, 7 A, B & C were marked for  
10 identification.)

11 BY MR. GALLAGHER:

12 Q Turning to tab 7, Mr. Seibert, would you  
13 take a look at these pictures, please?

14 A Yes, I am familiar with the picture and  
15 the site.

16 Q And what are these pictures of?

17 A These are pictures of businesses that are  
18 located along Route 28 and approximately the Ponderosa  
19 would be at a 45 degree angle from the Wenzel Drive  
20 location.

21 Q How many businesses are located on  
22 Freeport Road?

23 A There are a number of businesses. I would  
24 say in that area in particular, perhaps 6 to 10.

25 Q Are there any businesses on Wenzel Drive?

1           A           Yes, there are a few businesses on Wenzel  
2 Drive; correct.

3           Q           What businesses are on Wenzel Drive?

4           A           We have a tavern on Wenzel Drive. We  
5 also have an area which is both sales and service.  
6 And although it is not technically a business, I think  
7 the Commonwealth has a launch area there for a  
8 capacity of in excess of one hundred vehicles and it  
9 is usually at capacity all summer long.

10          Q           Is there any other places on Wenzel Drive  
11 where the public can come and fish, or swim, or use  
12 the river?

13          A           They extensively use the area that the  
14 Commonwealth of Pennsylvania owns and they also come  
15 across the pedestrian crossing that is down from the  
16 residential area, Terrace Drive, Campbells Run Road,  
17 and Guys Run Road, and they will fish at the end of  
18 the road, which is the public property.

19          Q           Can you mark on the map where the access  
20 to the river is off Wenzel Drive?

21          A           Okay. There are multiple access points.

22          Q           Anywhere. Whatever residents can come  
23 down and access the river on Wenzel Drive?

24          A           I have so marked.

25                   MR. DUNLAP: May I approach the witness to

1 see what he has marked?

2 JUDGE CORBETT: Certainly.

3 MR. GALLAGHER: Your Honor, I'd like to  
4 move these pictures into evidence. I believe that was  
5 7.

6 JUDGE CORBETT: Is there any objection?

7 MR. SALAPA: No, Your Honor.

8 JUDGE CORBETT: They will be so admitted.  
9 (Whereupon, Harmar Township Exhibits 7A through 7C  
10 were admitted into evidence.)

11 (Whereupon, Harmar Township Exhibits 8 A through 8 I  
12 were marked for identification.)

13 Q If you can turn to tab 8. I believe these  
14 are pictures of the subject crossing?

15 A That is correct.

16 Q Picture 8 A is the gravel road. Is this  
17 Guys Run?

18 A Exhibit 8 A would be the gravel road that  
19 we maintain that would be going up to near the rail at  
20 the Norfolk Southern right-of-way, and then if you  
21 would proceed a little bit further, you go across  
22 tracks going down a flight of steps that the township  
23 installed with the banister, and you would be at the  
24 crossing area that has the lights that allow the  
25 pedestrians to cross. You would also discover a bus

1 stop there and things of that nature.

2 Q And how wide is the crossing right here?

3 A We try to maintain it at four to six feet  
4 in width, primarily to get vehicles in there to cut  
5 vegetation back in the summer months.

6 Q 8 B?

7 A Exhibit 8 B would be, as I previously  
8 described, the railing across that area, and at one  
9 time, to my personal recollection, they used to have  
10 had a plank of timber on the outside of rail 2 on the  
11 inside, one on the far side, I mean the outer rail.  
12 There was a natural curve so you could have an  
13 approach to it and walk across there and down the  
14 steps at the crossing area which is fully signalized,  
15 and then you could either get on the bus stopping  
16 across at the Eat'n Park restaurant or go to the  
17 church that is there today. You could walk over to  
18 Brusters. That is important because a lot of people  
19 live on Twelve Mile Island, and come across the river  
20 and frequently go through the area even now. And they  
21 do frequent the Eat 'n Park Restaurant, and catch  
22 buses, and so forth, to go to Pittsburgh. I know that  
23 from my own personal observation. I have a cottage on  
24 that island also.

25 Q Picture 8C, do you recognize this? Can

1 you describe where you would be standing?

2 A Picture 8 C is a view -- I can see the  
3 Advanced Auto Parts on the right-hand side of the  
4 picture. This would be a view as if you are standing  
5 at the four foot vehicle and pedestrian crossing that  
6 is the subject of today's hearing, looking towards the  
7 Allegheny Valley Joint Sewer Authority.

8 Q Is this during winter conditions?

9 A That is correct.

10 Q Picture 8 D, is this in the other  
11 direction?

12 A Yes. Picture 8 D would be in the other  
13 direction, correct.

14 Q And would you be standing in the same  
15 position as you would be on 8 C?

16 A Yes, easterly.

17 Q Picture 8 E, this is during the summer  
18 months?

19 A That is correct.

20 Q And 8 F?

21 A Yes, that would be the same, in the summer  
22 months also. Exhibit D would have been in the winter  
23 months.

24 Q You were describing stairs that were not  
25 in good repair right now. Exhibit 8 G through 8 I;

1 would that be a fair depiction of the current  
2 condition of the stairs?

3 A Yes, that would be typical of the  
4 condition at this point in time.

5 MR. GALLAGHER: Your Honor, the township  
6 would like to move the pictures collectively at tab 8  
7 into evidence as Exhibit 8.

8 JUDGE CORBETT: All right. Any objection?

9 MR. SALAPA: No, Your Honor.

10 JUDGE CORBETT: They will be so admitted.

11 (Whereupon, Harmar Township Exhibits 8A through 8I  
12 were admitted into evidence.)

13 (Whereupon, Harmar Township Exhibit 9 A, B & C were  
14 marked for identification.)

15 Q Looking at tab 9, can you describe this  
16 picture for me? Actually what is the building in the  
17 background over there?

18 A The building in the background would be a  
19 church and then to the left of that building would be the  
20 the Brusters ice cream.

21 Q Is Brusters opened all year round?

22 A Yes, it is.

23 Q I see there is a bus stop on the Wenzel  
24 Drive side of Freeport Road?

25 A Yes, there is.

1 Q Are there any crosswalk located there?

2 A Yes. In fact, there is a crosswalk which  
3 is hard to see the painted lines in this picture  
4 because of the snow, however, you can correctly see  
5 signalization devices that allow the pedestrians to  
6 cross to come over to the bus stop from the Wenzel  
7 Drive area to the bus across the road and across to  
8 the side of Eat 'n Park Restaurant.

9 Q On 9B, the bus stops on Guys Run Road and  
10 the cross walk. I don't see a sidewalk. Is there a  
11 sidewalk that goes in either direction from the bus  
12 stop?

13 A No, there is not.

14 Q And picture 9 C, I think you already just  
15 previously testified to that as the crosswalk going  
16 from -- A C is Guys Run Road?

17 A Yes. The painted lines are much easier to  
18 see in that picture, correct.

19 Q And if you can take a look at Exhibit 1,  
20 I see that this area right here of Freeport Road where  
21 Guys Run Road crossing and the Wenzel Drive crossing  
22 is located. There is no other crossing, why is that?  
23 I see it is water locked?

24 A Yes.

25 Q And that is the whole stretch of Freeport

1 Road. Do you know what the speed limit is there?

2 A On the road?

3 Q Yes.

4 A I believe it is 45 miles per hour.

5 Q Is there a bus stop located anywhere in  
6 between the water locked area?

7 A No. The bus stop is located right here at  
8 the four foot pedestrian crossing area.

9 Q Is that the only one you can access?

10 A To my knowledge, yes.

11 MR. GALLAGHER: Your Honor, I'd like to  
12 move pictures tab 9 into evidence.

13 JUDGE CORBETT: Any objection?

14 MR. SALAPA: No.

15 JUDGE CORBETT: They are so admitted.

16 (Whereupon, Harmar Township Exhibit 9 A, B & C were  
17 admitted into evidence.)

18 (Whereupon, Harmar Township Exhibit 10 A, B, & C was  
19 marked for identification.)

20 Q Looking at tab 10, these are three  
21 pictures of a traffic sign. Can you describe the sign?

22 A The traffic sign on the pole shows  
23 Legislative Route 1001 which is Route 28. It has a  
24 sign therein that shows two pedestrian crossings.

25 Q Do you know what that sign means?

1           A           Pedestrians shouldn't cross because it  
2 would be hazardous.

3           Q           And that is, aside from the two railroad  
4 crossings, are there any other pedestrian crossings  
5 aside from the Guys Run Road?

6           A           Not to my knowledge.

7           MR. SALAPA: Your Honor, if we could have  
8 a point of clarification, what or where is Exhibit 10  
9 in relation to Exhibit 1?

10          JUDGE CORBETT: That is a fair question.  
11 Can the witness respond to the question?

12          A           I believe it is in the direction from the  
13 four foot pedestrian crossing towards the Wenzel Drive  
14 crossing. It is located in that area. I wish I knew  
15 north, south, east, or west. Towards the Pennsylvania  
16 turnpike, I believe, would be in the easterly  
17 direction of the pedestrian crossing. That is to warn  
18 people not to cross. There is no protection. It is  
19 really to direct you to the pedestrian crossing and  
20 the markings and the safe lights that are at the  
21 intersection. So I think if you would reference it,  
22 you are probably talking within a few hundred feet of  
23 the area.

24          MR. GALLAGHER: Thank you. Your Honor, we  
25 would like to move the pictures at tab 10 collectively

1 as Exhibit 10.

2 MR. DUNLAP: I object to 10 A. I don't  
3 think it has relevance to the proceeding. The witness  
4 was saying there is a across the roadway sign between  
5 Wenzel Road and the crossing at issue. It is common  
6 on many highways that you should cross between  
7 intersections. I don't see what relevance it has in  
8 the proceeding.

9 MR. GALLAGHER: We have no objection to  
10 10 A. 10 B and 10 C adequately represent the same  
11 sign.

12 MR. DUNLAP: Well, just 10 A.

13 JUDGE CORBETT: So you are going to  
14 withdraw Exhibit 10 A?

15 MR. GALLAGHER: Exhibit 10 A.

16 JUDGE CORBETT: Exhibit 10A is withdrawn.  
17 (Whereupon, Harmar Township Exhibits 10 B & 10 C were  
18 admitted into evidence.)

19 Q Aside from the residents on Wenzel Drive,  
20 do any other members of the public use the crossing?

21 A The four foot pedestrian crossing?

22 Q Yes.

23 A Yes, I have seen people with bicycles go  
24 through there. They have carried them up the steps  
25 across the tracks and go down Wenzel Drive. They have

1       been at the picture area. I have also seen people  
2       that lived on Twelve Mile Island, I have been with  
3       them as we walked across to go to dinner at the Eat 'n  
4       Park Restaurant. Yes, there are a lot of people,  
5       members of the public. Also there is a lot of people  
6       that would like to come down from what we call the row  
7       houses in Harmar Township, which would be Guys Run  
8       Road Terrace Drive and Campbell's Run Road. That is  
9       probably an active pathway for the people. They like  
10      to come down to the river in the summer. They like to  
11      fish in the area. It is quite active, yes.

12           Q           And the streets that you are referring to  
13      off Guys Run Road, if they came down to the  
14      intersection of Freeport Road, would they have any  
15      safe means of accessing say the Pa. Fish and Boat  
16      Commission on foot?

17           A           No. The only access is right there where  
18      it is fully signalized and a crosswalk is installed.  
19      That is a very active highway. You take your life in  
20      your hands to cross.

21           Q           There is no safe pedestrian alternative?

22           A           No, only at this location.

23           Q           Do you know of any trespass problems that  
24      exist between the Guys Run Road crossing and the  
25      Wenzel Drive crossing?

1 A Not to my knowledge in that area.

2 Q So in just that water logged area, the  
3 only two crossings ever used would be the Guys Run  
4 Road crossing and the Wenzel Drive crossing?

5 A Correct.

6 Q Do you know what the distance is between  
7 the Joint Water Sewer Authority crossing and the  
8 Wenzel Drive crossing?

9 A Now that I am looking at the map, what I  
10 can read on the map is 1,012 lineal feet.

11 Q I believe that is from Guys Run to Wenzel.

12 A I am sorry.

13 Q From the Joint Sewer Authority to Wenzel  
14 Drive?

15 A Well, I was talking to the Wenzel Drive  
16 location off the pedestrian crossing. Are you talking  
17 about the one up by the church?

18 Q We will just start with from the Joint  
19 Sewer Authority to Guys Run Road, how far is that?

20 A One thousand 12 lineal feet.

21 Q Do you know if trains slow down before  
22 they reach the Joint Sewer Authority?

23 A I do not believe they do slow down.

24 Q Do they sound off when they reach the  
25 Joint Sewer Authority?

1           A           Yes, they do. I became knowledgeable of  
2           that when I testified at a federal hearing about the  
3           signalization about this track. I discovered once  
4           every 12 hundred feet they are required to blow their  
5           horn and they have another requirment to sound their  
6           whistle two more times before they get to a crossing.  
7           Right before they get to the AVJSA crossing, they will  
8           give one blast on the horn.

9           Q           After it reaches the Joint Sewer  
10          Authority, do the trains sound off when approaching  
11          the Guys Run Road Crossing?

12          A           I heard them do that, yes.

13          Q           How many trains actually come by in a day?

14          A           This past year, in my opinion, it is  
15          greatly. I being a person that has an office in the  
16          vicinity, our company owns right on the rail and we  
17          are there during the day. I have a house right along  
18          the same rail and at night I can tell you that over  
19          the past year we have watched periods of time where  
20          there were perhaps 2 or 3 trains a night. We watched  
21          the volume going during the day from 4 to 6 and during  
22          the evening from perhaps 4 to 6 also. We also had a  
23          stretch time where there were no trains that came  
24          through at all, and I subsequently found out that  
25          that is because they closed part of the rail for a

1 project down in Fox Chapel, I believe. But the  
2 majority of traffic coming through there used to be  
3 frequent and it was to the power station at Shelocta.  
4 You could tell because there was two pushers in the  
5 lines, two engines. If you don't see the engines,  
6 they were most likely going up to the Homer City  
7 scrap. The other train was from Allegheny Ludlum and  
8 it was more frequent. Traffic on the rail, you can  
9 tell there is a problem on the main line because they  
10 direct all sorts of trains through the area. The  
11 track manager himself told me. He is no longer the  
12 track manager. He told me a couple of years ago it  
13 primarily was the coal traffic. Anything else was  
14 because of the main line problems or other issues.

15 Q Coming back to the crossing, what is your  
16 opinion is the estimated daily traffic at the Guys Run  
17 Road crossing?

18 A In the summer, it is much greater. Right  
19 now there is very little traffic because it is not  
20 maintained and certainly no one that would be in an  
21 elderly condition would try to attempt to cross the  
22 crossing. That is one of our concerns over the  
23 subject of safety. People can't get across because of  
24 the snow. In the summer when the conditions are  
25 better, people may step across these tracks and such,

1 and you can take a count in the summer ranging from a  
2 dozen people in the day during the week to perhaps 6  
3 to 12 on the weekend. It certainly is not out of  
4 line to see a tremendous amount of people come off of  
5 the island and the fishing area in both directions,  
6 especially on a hot day.

7 Q Do any kids or anybody located on Terrace  
8 Drive take their bikes down to access the river?

9 A Yes, frequently.

10 Q Do you believe -- is there in your opinion  
11 any reason why the use of the pedestrian crossing will  
12 increase in the future?

13 A I think that definitely it will increase  
14 in the future. The Pennsylvania Fish Commission has  
15 plans to develop some of that area in there. Of  
16 course that has been ongoing for quite a few years and  
17 I think that the launch area is working almost to  
18 capacity. The increase has been gradual but it is  
19 building up.

20 Q Is this undeveloped property located on  
21 Wenzel Drive?

22 A Yes. There is a substantial section of  
23 the property, approximately three acres, I believe,  
24 and we have been in touch with the owners and they are  
25 anticipating anything from a marina type of a setting

1 to pedestrian uses of that property. We would  
2 anticipate an additional burden on the pedestrian  
3 crossing to go to the property which I think is owned  
4 by the Kratsa property.

5 Q Do you know what the area of Wenzel Drive  
6 is zoned?

7 A I believe it zoned R 3.  
8 (Whereupon, Harmar Township Exhibit No. 11 was marked  
9 for identification.)

10 Q Would you turn to tab 11. This is the  
11 zoning ordinance of Harmar Township; is that correct?

12 A That is correct.

13 Q And turning to the second page of this  
14 exhibit, can you tell me what some of the uses allowed  
15 in an R 3 district are?

16 A In the R 3 district, we can have a variety  
17 of things, but I must also tell you any business  
18 currently is a non conforming business of record, so  
19 we have things such as a marina operations and perhaps  
20 even though there are specific allowances in the R 3  
21 district, they are grandfathered that allowance, and  
22 on Wenzel Drive, you can have anything from single  
23 family homes -- obviously, you can have private  
24 garages. Group garages are always allowed. Home  
25 occupations are certainly allowed in that area. So,

1 there are a variety of uses. You can even build a  
2 nursing home, I believe is a conditional use.

3 Q And referring to the map, the section from  
4 Freeport Road to Wenzel Drive that is orange in line,  
5 does the township consider this a part of the road  
6 system?

7 A Yes, we do.

8 MR. GALLAGHER: Your Honor, I'd like to  
9 move the Zoning Ordinance into evidence as exhibit 11.

10 JUDGE CORBETT: Any objection?

11 MR. SALAPA: No, Your Honor.

12 JUDGE CORBETT: It will be so admitted.

13 (Whereupon, Harmar Township Exhibit No. 11 was  
14 admitted into evidence.)

15 (Whereupon, Harmar Township Exhibit No. 12 was marked  
16 for identification.)

17 BY MR. GALLAGHER:

18 Q Can you turn to tab 12, Mr. Seibert, and  
19 pull this out. Do you know what this is?

20 A This would be obviously a Plan of  
21 Partition of Real Estate. We would typically refer to  
22 that as a subdivision of lots on a private road.

23 Q And can you describe the area of this  
24 plan, where it would be on the map?

25 A You are talking about Exhibit 1?

1 Q Well, comparing Exhibit 12 to Exhibit 1?

2 A This would be what we would call today  
3 Wenzel Drive.

4 Q And --

5 MR. DUNLAP: To clarify the location,  
6 would the private road be Wenzel Road?

7 THE WITNESS: The private road. This is a  
8 map that goes back to 1897 so --

9 Q On the left-hand side there is a road  
10 referenced, a township road. Would that be Guys Run  
11 Road?

12 A Yes, it would be.

13 Q What year was it recorded?

14 A This plan was recorded, I believe it says  
15 survey, June, 1897.

16 Q Is the township currently in possession of  
17 any records vacating that portion of Guys Run Road?

18 A No, we are not. And we had a search for  
19 such a record and we were unable to locate them either  
20 at Pittsburgh or at the township.

21 Q That property has always been open to the  
22 public?

23 A Yes, it has been, specially back when the  
24 coal mines used to be in that area. It was frequently  
25 used back then.

1 Q Has there ever been signs posted saying  
2 "no trespassing" at the crossing?

3 A None whatsoever.

4 Q Do you believe that the township is  
5 required to pay for any of the maintenance regarding  
6 the Guys Run Road crossing?

7 A I believe the township does in fact pay  
8 for maintenance leading up to the right-of-way line of  
9 the current Norfolk Southern Conemaugh line, so we  
10 feel responsible to do that, yes. The maintenance  
11 between the right-of-way is Norfolk's obligation  
12 under the PUC order.

13 Q If you could turn to tab 13 --  
14 (Whereupon, Harmar Township Exhibit No. 13 was marked  
15 for identification.)

16 MR. GALLAGHER: I'd like to move the last  
17 exhibit into evidence as Exhibit 12.

18 JUDGE CORBETT: Any objection?

19 MR. SALAPA: No, Your Honor.

20 JUDGE CORBETT: It will be so admitted.  
21 (Whereupon, Harmar Township Exhibit No. 12 was  
22 admitted into evidence.)

23 BY MR. GALLAGHER:

24 Q Turning to Exhibit 13, do you recognize  
25 this document?

1           A           Yes, I do.

2           Q           And who prepared it?

3           A           This was prepared by the Harmar Township  
4 engineering firm, Senate Engineering Company, at our  
5 request.

6           Q           And is this an overall estimate of what  
7 the entire reconstruction maintenance is?

8           A           Yes, it is.

9           Q           And looking at items 1 through 5, what  
10 would the township be willing to take on?

11          A           We have previously offered to reinstall  
12 any approach ways to the track from the Wenzel Drive/  
13 Guys Run Road area. We also indicated that we would  
14 take care of any maintenance, including the  
15 installation of steps, a real good set of steps from  
16 on the other side of the right-of-way line down to  
17 Guys Run Road. We were requesting that the railroad  
18 would reinstall what they previously removed, which  
19 is the plank timber and the additional paving over to  
20 the right-of-way line. The township cannot spend  
21 money on private property. That is why we offered to  
22 re-establish what we have done in the past, some 20  
23 years ago.

24          I also serve on the Harmar Township Board of  
25 Supervisors. I was elected to office back then, and at

1 that point in time I am aware that Conrail did in fact  
2 maintain that adequately, and we did have asphalt  
3 approaches to that rail. I am aware of that.

4 Q Turning back to Exhibit 1, all of these  
5 pedestrians located in this water lot section, the  
6 only way -- I want to make sure this is clarified --  
7 the only way they can get to the river or vice versa,  
8 for the businesses and residents on Wenzel Drive is a  
9 pedestrian crossing?

10 A That is correct, yes.

11 MR. GALLAGHER: That is all I have, Your  
12 Honor.

13 JUDGE CORBETT: Mr. Dunlap, we will take  
14 you last. We will see if there are any other  
15 questions that the other parties have. Mr. Salapa?

16 MR. SALAPA: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. SALAPA:

19 Q Mr. Seibert, the old Commission orders  
20 that are part of the record -- I believe they are  
21 marked as Exhibit 4 -- they reference a railroad  
22 station. Is that railroad station still in existence?

23 A No, that railroad station was torn down.

24 Q And do you know when it was torn down?

25 A I was a child, but I recall it, and I

1 remember when it was torn down. It had to be in the  
2 fifties, I believe. I was a young child.

3 Q It would have been in the vicinity of the  
4 Guys Run Road crossing; is that correct?

5 A It was in that area, but I couldn't give  
6 you what direction of Guys Run Road. I mean I was  
7 still a child back then. I remember the building but  
8 I can't remember the exact location.

9 Q As a point of clarification, the AVJSA  
10 crossing that you referred to earlier in your  
11 testimony, that is in the lower left-hand portion of  
12 Exhibit 1; is that correct?

13 A That is correct.

14 Q Similarly, when you refer to Terrace  
15 Drive, that is in the upper left-hand portion of  
16 Exhibit 1; that would be in the upper left-hand  
17 quadrant?

18 A Correct.

19 Q You also referenced in your testimony  
20 Twelve Mile Island. Is that depicted at all on  
21 Exhibit No. 1?

22 A No, it is not. But it is in the middle of  
23 the blue area that is called the Allegheny River.  
24 Right immediately across from where it says  
25 Prasnika's Tavern and Harmar Marina, that would be a



1 central part of the Twelve Mile Island. If it was  
2 drawn in, it would be drawn as an island in the  
3 middle of the river.

4 Q You mentioned people live there. Do they  
5 live there year round?

6 A They live there probably for seven months  
7 out of the year.

8 Q And is the only way back and forth from  
9 Twelve Mile Island via a boat?

10 A That is correct.

11 Q Is there a regular ferry service or  
12 something that runs back and fourth from Twelve Mile  
13 Island?

14 A The association has a service boat that  
15 operates on weekends, primarily, correct.

16 Q So there is an association of homeowners  
17 on Twelve Mile Island that basically pays for a  
18 transportation boat back and forth to the island?

19 A It is part of their operating cost,  
20 correct.

21 Q Do you know if at one time there were two  
22 sets of tracks at this location at Guys Run Road?

23 A At one time there were three sets of  
24 tracks at that location. To my knowledge, it was a  
25 center track removed. There was transfers in and

1 around that area. Whether it was specifically at that  
2 location, I would have to look at the track now, but  
3 there were three, and then they removed the last track  
4 had to be within the last five to ten years, so now  
5 there is only one track there.

6 Q Do you recall a specific year when the one  
7 track was removed?

8 A The third track that was in this area was  
9 removed probably in the '60s, I believe, and then the  
10 other track was, I believe it was within the last five  
11 to ten years. I was rather surprised when they took  
12 the last set out.

13 Q You had mentioned that at one time there  
14 was timber plank was between the rails; is that  
15 correct?

16 A That is correct.

17 Q And --

18 A When Conrail owned the rails, I believe.

19 Q Do you know when they were removed?

20 A I don't remember the year, but I remember  
21 when I was in office the first time that the plank  
22 timber were reinstalled because Harmer Township asked  
23 for that, and I think that was right at the end of the  
24 Pennsylvania Railroad era going to Conrail, but I know  
25 subsequent to that, we asked the railroad if they

1 would help maintain, and from time to time they put  
2 asphalt in there. They removed the plank timber when  
3 they were doing a track upgrade. It had to be 15  
4 years ago when they took out what we knew the plank  
5 timbers to be in there. After that date, they had  
6 thrown asphalt in there because the track  
7 superintendent did that for us. We requested it and  
8 he did it.

9 Q So you are saying at one time there were  
10 timber planks in there and then approximately 15 years  
11 ago those timbers were removed?

12 A I think they were taken out when they were  
13 doing crossing updates, yes.

14 Q Subsequent to that, the railroad operator  
15 put some asphalt between the rails?

16 A That's correct.

17 Q How long has it been since the asphalt  
18 between the rails had been removed?

19 A I haven't noticed it in the last five  
20 years or so. It was probably longer than that, but I  
21 can safely say within the last five years I have seen  
22 no evidence of asphalt being placed in.

23 Q All right. One other question. You had  
24 referenced in your testimony a coal mine in the  
25 vicinity of the Guys Run Road crossing?

1           A           That is correct.

2           Q           Is that shown anywhere on Exhibit 1 or can  
3 you point out where that was on Exhibit 1?

4           A           Yes. On Exhibit 1, it would be in the  
5 left quadrant of the map a little bit down from the  
6 center part and it says "Harmar Mine," immediately  
7 left of the body of water which I referred to as  
8 lagoon.

9           Q           I see it. Is that still an active mine or  
10 has that been closed down?

11          A           That has been closed for quite a few  
12 years. That is the reason the people walk so much in  
13 the area because what we call the row of houses we  
14 used to call the coal mine houses and most of them  
15 didn't have places to park cars, so this was quite an  
16 active area and still is for people to walk. Lack of  
17 parking is one of the biggest problems in the Guys Run  
18 Road and Terrace Drive area, and that is why everybody  
19 likes to walk in this area.

20                   MR. SALAPA: Thank you, that is all I  
21 have.

22                   JUDGE CORBETT: Mr. Sharp?

23                               CROSS EXAMINATION

24           BY MR. SHARP:

25           Q           Mr. Seibert, you mentioned you have been

1 an elected official in the township. Has that been on  
2 two separate occasions?

3 A Yes. Twenty years apart, approximately.

4 Q What is your current position with the  
5 township?

6 A I am chairman of the Public Safety  
7 Committee and Police Committee and vice chairman of  
8 the Board of Supervisors.

9 Q You are also a member of the Board of  
10 Supervisors in your first time on the Board?

11 A Yes. I was a member and also a chairman  
12 of the supervisors at that time and also on the Police  
13 Committee.

14 Q I am going to try to refer to Exhibit 1  
15 with some of my questions. Looking at the crossing  
16 with what we are referring to as the pedestrian  
17 crossing in the orange area depicted there, do you  
18 know if Harmar Township has ever received any  
19 transportation money for the upgrade or upkeep of this  
20 area?

21 A I didn't know it was available.

22 Q Let me rephrase it. I am not suggesting  
23 it is available. Have you ever received any?

24 A Not from my personal knowledge, but it has  
25 been an extended period of time between my first term

1 and second term. Approximately 20 years elapsed.  
2 During my term of office, I was not aware of it.

3 JUDGE CORBETT: But you can ask after the  
4 meeting?

5 THE WITNESS: We will certainly inquire  
6 into it.

7 Q Do you know if the pedestrian walkway area  
8 had been designated a priority area by the Department  
9 of Conservation of Natural Resources?

10 A No. I have been a member of the Western  
11 Pennsylvania Conservancy for 25 years and I am  
12 familiar with these things. I had recently had a  
13 situation with an individual asking about grant money  
14 for that in particular.

15 Q Let's move off the orange area for a  
16 second. Does the township maintain Wenzel Drive?

17 A Yes.

18 Q Does the township maintain Guys Run Road  
19 from the point north of the existing traffic light on  
20 S R 1001, Freeport Road?

21 A To what point?

22 Q Why don't you tell me as far as Guys Run  
23 Road what the township maintains?

24 A We maintain part of this road even now.  
25 It is a state highway. We have contracts with the

1 Department of Transportation which typically are known  
2 assault contracts and do salting and maintenance of  
3 the winter plowing. We maintain specifically and we  
4 have as a tradition from the curve on 1001 up to the  
5 boundary line of the Norfolk Southern. That is why we  
6 installed the walkway, and the banister, and such.

7 Q That leads me to ask two questions. Is  
8 Guys Run Road a township highway?

9 A State highway.

10 Q Route 28 south to Freeport Road, I am  
11 looking at the legend on the map basically from north-  
12 east to southwest?

13 A Route 28 we call Freeport Road. It's the  
14 same road.

15 Q Route 28 Expressway?

16 A That would be the expressway, correct.

17 Q So for the purpose of clarification, let  
18 me ask again. I refer to Freeport Road as Route 1010  
19 and the expressway as expressway. Does the township  
20 maintain Guys Run Road from the expressway to State  
21 Route 1010?

22 A Only what is previously stated, it would  
23 be a contract agreement.

24 Q Are you saying you installed the  
25 crosswalk across Guys Run Road or across S R 1001?

1           A           When you say the crosswalk, which portion  
2           of it are you talking about?

3           Q           If I understand correctly, there are two  
4           crosswalks at this location near the traffic light at  
5           the intersection of Guys Run Road and S R 1001, there  
6           are cross walks that connect the orange area to the  
7           other side of Freeport Road and the crosswalk that  
8           connects the western portion of Freeport Road to the  
9           eastern portion on Eat 'n Park side?

10          A           I understand.

11          Q           Which one of those did the township  
12          install?

13          A           Within the actual curb to curb section of  
14          1001, Penn DOT did install and maintains the entire  
15          portion. The township does not. However, there is  
16          a slight addition. I must add that once the track  
17          signals are turned over to the township as the  
18          crossway signalization, the township does maintain  
19          them.

20          Q           You maintain that through an agreement  
21          with PennDOT?

22          A           By law we must accept those signalizations  
23          and permanently maintain them. PennDOT never  
24          maintains them again. They did the initial  
25          installation. Once that is complete, Harmar Township

1 maintains the signalization and paints the cross  
2 markings with our own paint and resources.

3 Q I am familiar with that. Let's ask this  
4 question. If Wenzel Drive is a township road, do you  
5 receive liquid fuel funds for Wenzel Drive?

6 A Yes.

7 Q In fact, if the township weren't to agree  
8 to maintain signals as installed, they were not  
9 installed; isn't that correct?

10 A Under current law, that would be correct.  
11 Years ago when some of these signals were put up, that  
12 is not the case. But that is our current  
13 understanding. We must agree to accept them or else  
14 they won't be installed.

15 Q Let's look at the orange area on Exhibit  
16 1. Is there any vehicle access from the end of Wenzel  
17 Drive to the orange area that is called Guys Run Road  
18 crossing?

19 A Yes. People are driving their bicycles.  
20 Somebody was crazy enough to drive one of those three  
21 wheel vehicles.

22 Q Not a car or an ambulance?

23 A No. We take the township vehicles up to  
24 maintain it but it is not an active area for vehicles.

25 Q You cannot get a vehicle on Guys Run from

1 the north to the south because you cannot go up the  
2 stairs?

3 A I think you could if you maintain the  
4 crossing as you are supposed to. I know if we  
5 improve not only the access that we have, you can take  
6 a motor cycle up there, absolutely.

7 Q Let's exempt from any kind of bicycle or  
8 all terraine vehicle. Let's talk about a normal  
9 vehicle, car, truck traffic. That is not the purpose  
10 of this crossing in the orange area that is the  
11 subject of this pedestrian crossing?

12 A But I don't think it is prohibited under  
13 the current order. What you must understand, if  
14 someone was to take a lawfully registered motorcycle  
15 up into the area, I don't think it is prohibited.

16 Q That is not my concern. I understand your  
17 order but I think the order speaks for themselves on  
18 that. Do you know if you receive any liquid fuel  
19 funds for the orange portion?

20 A I specifically can't tell you that we do.  
21 I think we do but I can't say that a fact.

22 JUDGE CORBETT: Try not to talk over one  
23 another.

24 Q You mentioned in direct testimony about  
25 pedestrian information held by PennDOT as far as

1 pedestrian counts or specific information. Do you  
2 have any specific personal knowledge of any counts or  
3 pedestrian information being held by the department?

4 A I was talking at that time, I believe,  
5 about the accidents that occurred at the Allegheny  
6 Valley Joint Sewer Authority and I have seen those  
7 accidents with my own eyes. That is what I was  
8 referring to.

9 Q But you don't know yourself specifically  
10 of any pedestrian information held by PennDOT  
11 regarding that crossing?

12 A No.

13 Q For clarification, your estimated traffic  
14 counts, and pedestrian volume, and movements today,  
15 those specific numbers are based on studies or from  
16 your general operation as a township supervisor or  
17 resident?

18 A Both myself. As I previously stated, I  
19 use the crossing going to the Eat'n Park Restaurant.  
20 On hot summers nights some people from the island go  
21 to Brusters ice cream. It's based on active  
22 participation. When I frequently walk past the area, I  
23 watch people walk from Guys Run Road. When I am  
24 having lunch at Eat'n Park, I watch them go up the  
25 steps, cross the highway with their fishing tackle,

1 depending on what time. I have watched older people  
2 walk there. Specifically it looks like they have  
3 headed to the river to fish. I have done a lot of  
4 personal observation. Not intentionally, just if you  
5 are sitting there having lunch or dinner, you see  
6 this.

7 Q But you are not aware of any township head  
8 counts, physical head counts?

9 A I wouldn't think there would be any such  
10 records.

11 Q In Exhibit 1, there are no actual state  
12 highway crossings of the Conemaugh line as depicted  
13 on this line; would you agree with me?

14 A I don't understand the question.

15 Q The Allegheny Valley Joint Sewer  
16 Authority access drive, is that a local or private  
17 road?

18 A I think that is a matter that is currently  
19 being disputed between Norfolk and Allegheny Valley  
20 Sewer Authority. I can't testify to the status of  
21 that.

22 Q Do you know if it is a state highway or  
23 not?

24 A The route 1001 is a state highway; route  
25 28 is. I previously stated there is litigation

1 involving that road. Your point is?

2 Q You don't know what type of road is at the  
3 intersection of the AVJSA access drive and the  
4 railroad?

5 A I just indicated that I did not. The  
6 solicitor is here today. He could probably tell you.

7 Q You have no knowledge that it is a state  
8 highway?

9 A I would be guessing and I don't prefer to  
10 guess. I stated clearly that I am not aware.

11 Q The Guys Run Road crossing, at the point  
12 south of Freeport Road, S R 1001, do you know that is  
13 not a state highway?

14 A I do not believe that there is any  
15 evidence. It has been abandoned.

16 Q Wenzel Drive, you already stated is a  
17 township road?

18 A Correct.

19 Q S R 1001, if you take a look at A R 1001,  
20 is there any intersection of that road where the  
21 railroad line is depicted on this map?

22 A Run that past one more time. I didn't  
23 catch that.

24 Q As depicted on Exhibit 1, Freeport Road,  
25 S R 1001, are there any intersections of S R 1001 and

1 the railroad described as the Conemaugh line depicted  
2 on this map?

3 A Are there any intersections?

4 Q That is correct.

5 A Are you talking about such as 910 and  
6 Route 28, is there an intersection there?

7 Q I am sorry, is that depicted on this map?

8 A I see it clearly in the upper right-hand  
9 quadrant, the center of the highway, you will see an  
10 icon representing traffic signals. That would be  
11 Route 910 intersecting with 1001. That is, I believe,  
12 that is a public crossing at Warner Entrance. It  
13 has full crossing preemptive devices and  
14 signalization.

15 Q When I say intersection, I am referring to  
16 the intersection of the rail and the highway.

17 A I wish you would have said that. I would  
18 say not that I could see. I thought when you said  
19 intersection, then you were talking about 1001.

20 Q You and I agree there are various  
21 intersections of the state routes but no intersections  
22 of the Conemaugh line in specifically 1001?

23 A No, but I am not saying the Conemaugh  
24 line is not intersecting the public highway.

25 Q That is not my question.

1           A           Not that I can see on the map.

2           Q           The intersection of 910 that you are  
3 referring to, up in the right-hand portion of the map,  
4 that is across what appears to be the waterway from  
5 the land mass on which the public crossing is located;  
6 is that correct?

7           A           There is a waterway there, correct, and  
8 what is the other part of the question? Your  
9 questions are a little bit complex for me.

10          Q           The crossing of 910, S R 910 depicted on  
11 the upper right-hand corner of the map, that is on a  
12 parcel of land that is to the east of basically the  
13 peninsula where the pedestrian crossing and the Wenzel  
14 Drive crossing are located; is that correct?

15          A           Without the word peninsula, yes.

16          Q           And so we are looking at the crossing when  
17 you walk on the crossway of S R 1001 on Freeport Road,  
18 one of the uses of that crosswalk, you would agree, is  
19 for people to get from the north to the south and  
20 south to the north to use the bus stops on either  
21 side?

22          A           We are talking about the four foot  
23 pedestrian crossing, yes, that is true.

24          Q           The area of the crosswalk just north of  
25 the four foot pedestrian crossing?

1           A       Yes.

2           Q       In regard to that question, what bus  
3 system services are in Harmar Township?

4           A       Harmar Township and it would be Port  
5 Authority of Allegheny County.

6           Q       Just for clarification, in your  
7 testimony earlier you stated that you believe the  
8 speed limit on the roadway in question on Freeport  
9 Road, S R 1001, is 40 miles an hour; is that right?

10          A       In that section, I believe that would have  
11 to be.

12          Q       Can you turn to Exhibit 7 C in your  
13 materials, please?

14          A       Yes.

15          Q       In relationship to Exhibit 1, your map,  
16 what area does this picture depict?

17          A       That area, I believe, if I am following  
18 your north, south, east, west would be easterly in  
19 direction to the four foot pedestrian crossing.

20          Q       That sign there in Fun Fest, is that the  
21 same as what is depicted on Exhibit 1 as Fun Fest  
22 Entertainment Center?

23          A       Yes, it would be.

24          Q       Do you see in Exhibit 7 C, do you see that  
25 on what appears to the right-hand side of Freeport

1 Road there a posted sign speed limit of 45 miles an  
2 hour?

3 A That is what the sign says, correct. It  
4 appears there was vandalism. I would like to note  
5 that for the record.

6 Q These are general follow-up questions. I  
7 understand it's your intention to ask that Norrfolk  
8 Southern do what is described within Exhibit 13 to  
9 maintain or reopen this pedestrian crossing; is that  
10 correct?

11 A I can answer that by saying that Norfolk  
12 Southern should be ashamed of themselves for not  
13 maintaining as they were originally ordered and  
14 forcing our little township to spend thousands of  
15 dollars to re-establish a safe crossing even if you  
16 haven't maintained it properly. You have not honored  
17 your agreement in this case and I think that is  
18 disgraceful.

19 MR. DUNLAP: I move to strike anything  
20 about an agreement. There is no evidence of any  
21 agreement.

22 JUDGE CORBETT: Overruled.

23 Q My follow-up to that, is the township  
24 requesting PennDOT to bear any of the cost relating to  
25 your request?

1           A           The township specifically set forth in the  
2 beginning of this proceeding, we are asking for the  
3 enforcement of the existing order which I believe the  
4 attorneys for Norfolk Southern expect for themselves.  
5 We are asking for what the order states.

6           Q           You are asking for an enforcement of the  
7 order that is depicted in Exhibit 4?

8           A           I am referring to the order as is  
9 previously stated.

10          Q           And if I told you that the order that you  
11 are referring to as previously stated does not require  
12 at that time the Department of Highways or its  
13 successor, the Pennsylvania Department of  
14 Transportation, to maintain any one portion of the  
15 pedestrian crossing, would you agree with me that the  
16 township is not asking PennDOT to comply with or to do  
17 any work under the order?

18          A           I think the department was party to the  
19 agreement and I would think the department probably  
20 has some responsibility, but I am not sure it is a  
21 legal problem, but I don't understand or would I have  
22 the ability to understand. Would we seek PennDOT's  
23 involvement in this, yes, as we did before this point  
24 in time, as we did before I was on the Board.

25          Q           You have no specific knowledge of any

1 specific PennDOT's responsibility for the pedestrian  
2 crossing; is that correct?

3 A I have not read anything for or against  
4 that position, but I am going to add that I don't  
5 know, there could be a document that exists that we  
6 don't have because we requested the documents from  
7 both the railroad and the other parties, and they also  
8 seem to find that they can't locate them. I am saying  
9 there could be an existing agreement but I just can't  
10 seem to locate it. We believe there was another  
11 agreement but we can't locate it.

12 MR. SHARP: That is all I have.

13 JUDGE CORBETT: Mr. Dunlap?

14 CROSS EXAMINATION

15 BY MR. DUNLAP:

16 Q Mr. Seibert, please look at your  
17 photographs at tab 5, 5B. This is just for  
18 clarification. There seems to be confusion when you  
19 were testifying. Exhibit 5B is the Joint Sewer  
20 Authority?

21 A The picture appears to be taken from that  
22 crossing, yes, in an easterly direction towards the  
23 four foot vehicle and pedestrian crossing.

24 Q You have mentioned that you had seen  
25 accidents at that Joint Sewer Authority crossing?

1           A           I saw the aftermath of the accidents. I  
2           didn't actually witness accidents per se, but I saw  
3           the one truck in particular was still on the crossing.  
4           The engine was there. That is the kind of context I  
5           am speaking of.

6           Q           Am I correct or not that this appears to  
7           be an under grade crossing?

8           A           This is not an under grade crossing. This  
9           would be the crossing from the inlet to the canal.

10          Q           Where does it show that the kids jump off  
11          and swim in the area?

12          A           That is not a crossing in this picture.  
13          The picture is being taken from the crossing in that  
14          direction.

15          Q           The actual crossing is in 5A?

16          A           I am refer to 5A, and yes, that is the  
17          crossing, correct. You would be standing on that  
18          crossing taking a picture of Exhibit 5B. And I agree  
19          it was confusing earlier. I was leaping ahead of the  
20          exhibits and I apologize.

21          Q           You had mentioned that you had personally  
22          seen accidents at that Joint Sewer Authority crossing?

23          A           I have seen the aftermath of accidents,  
24          yes.

25          Q           Do you have any records of that accident

1 there other than your personal --

2 A Yes, the township keeps records of the  
3 accidents in those areas. There are usually police  
4 reports filled out. At the time that I remember when  
5 there was a particular Conrail accident, they would  
6 send their own people out. There are adequate records  
7 of all of the accidents at that crossing, yes, plus  
8 there were accidents that have taken place at the  
9 Wenzel Drive crossing, and one of the residents, in  
10 fact, from Wenzel Drive was killed there.

11 Wenzel Drive, that is the one that we said  
12 wasn't safe for pedestrians to cross. The fact that  
13 somebody was killed would be bad enough. That would  
14 have occurred prior to the signalization being put in  
15 there. Now, they had lesser signalization where they  
16 had the flashing lights but they did not have the  
17 crossing arms.

18 Q Looking at photo 6 C, if you look from the  
19 railroad tracks up towards on Route 28 there, Freeport  
20 Road, would you agree with me that there are what  
21 appear to be crosswalk lines in the roadway that go  
22 across Wenzel Drive?

23 A I can absolutely testify that they are not  
24 crosswalk lines, they are lines required by PennDOT.  
25 You will see a solid line in the foreground. Then if

1 you would have an aerial shot, you would see you have  
2 the cross hatch and RR for railroad. That is not a  
3 crosswalk, that is a safety marking.

4 Q You testified that the township installed  
5 steps and railing at one of the Old Route 28 side of  
6 Guys Run Road crossing; is that correct?

7 A That is correct.

8 Q When was that done?

9 A I remember at one point, it was in place  
10 when I was in office some 20 years ago. I can recall  
11 prior to me being elected in 1999 to office. They had  
12 maintained it again. They put up new banisters and  
13 such. The old ones had broken.

14 Since then they haven't done a lot of  
15 active repair work. We are waiting to see what will  
16 happen at this proceeding. We think we should go in  
17 and revamp it right now.

18 Q My understanding from your Exhibit No. 13  
19 is that the maintenance of the stairs, should the  
20 Commission sustain your complaint, that the  
21 maintenance of the stairs wouldn't be the township's  
22 responsibility?

23 A We believe through our discussions with  
24 people at PennDOT that we will yes, absolutely  
25 maintain it, and if there is any technical problem of

1 any sort, depending on any agreements they have, we  
2 will indeed maintain that under the agility program.  
3 If they don't have the ownership of the location, we  
4 agree to do that, specifically under the agility  
5 program, which is a quid pro quo program, and we will  
6 do that, and we will do something for Harmar Township,  
7 but Penn DOT wouldn't be doing that, we insist we will  
8 be doing that.

9 Q The agility program, I am not familiar  
10 with?

11 A It is a program where you cooperate with  
12 Penn DOT in particular, and let's say that PennDOT  
13 would ask us to do something, we would do it and then  
14 they will barter something like painting, striping for  
15 Harmar Township. When we are doing line striping, we  
16 would do things on PennDOT's property where they  
17 request permission but PennDOT would do something on  
18 our property which would be a quid pro quo, and try to  
19 balance the monies out for the same amount of money.  
20 It is a good program. It could cost three to five  
21 thousand dollars per year. We could use their labor.  
22 They couldn't get to it at the moment. And then they  
23 would do the line striping for us. It is a great  
24 program.

25 Q Looking at your Exhibit 1, would you

1 please identify on which corner of the intersection at  
2 Eat 'n Park that the bus stop is located on? For  
3 simplicity sake, if you could refer to northeast,  
4 northwest, southeast, southwest?

5 A To make it simple, this one exhibit shows  
6 it, so I would defer to the exhibit that is already in  
7 the record showing the bus stop.

8 Q Which exhibit is that?

9 A I don't know.

10 Q You mean your photos?

11 A Yes. One of the photos shows the bus  
12 stop.

13 Q I am referring to the photographs to the  
14 map?

15 A It is in the photographs, I believe.

16 Q So where the buses are? I didn't notice  
17 those are buses.

18 A That would be Exhibit 9.

19 MR. GALLAGHER: Yes, Exhibit 9, matching  
20 up with Exhibit 1.

21 A So you could see the bus stop clearly in  
22 the photos and then the crosswalk leading up to -- you  
23 can see the background in the pedestrian line is lit  
24 not to walk across the road at that point.

25 Q Is there a parking lot in this area?

1           A           Not in this area, no.

2           Q           Where do people take their buses to?

3           A           The bus schedule is there. I could  
4 speculate.

5           Q           No, I am not asking you to speculate. You  
6 were talking about train counts from your personal  
7 observations from your business, and home, and so  
8 forth. You didn't take any actual 24 hour counts,  
9 however, where you sat for 24 hours and counted  
10 trains, did you?

11          A           Some years ago I did, because we had a  
12 dispute with our company and Conrail, and we did  
13 actually sit there for an extended period of time two  
14 or three times and mark down every single train that  
15 came up and down the tracks. Coincidentally, Conrail's  
16 number did agree with our number.

17          Q           When was that, however?

18          A           That was going back when Conrail owned the  
19 line.

20          Q           They owned it for about a 23 year period?

21          A           It seems likes that long, yes.

22          Q           It was towards the beginning?

23          A           Right. We recently did a second count.  
24 Our secretary/treasurer who is located within sight  
25 distance of the rail in Harmar Township, we instructed

1 him to keep track of all of the trains that went  
2 through the area. At night, I try to keep the best  
3 estimate possible. I doubt I sleep through. I keep  
4 trying to keep track of the trains coming through at  
5 night. Mr. Avino, who is here today, could testify  
6 to the train count.

7 Q The area -- looking at Exhibit 1 -- the  
8 hatched area which leads up to the subject crossing,  
9 the southeastern end of that hatched area, that is a  
10 parking lot; is that correct?

11 A I am not very good with north, south,  
12 east, and west. You were saying the bottom of the  
13 picture?

14 Q The bottom picture.

15 A That bottom part is not a parking lot, no.  
16 People can park there but it is not a parking lot per  
17 se. As you go from the end of the cross marking, the  
18 public road goes to the right of the river. That is  
19 not a parking lot; it is an open area.

20 Q You are saying it goes to the river, the  
21 Wenzel Drive appears to go down to the hatched area  
22 and end?

23 A It does on the map. But the township road  
24 map will show it is going to the bottom of the river.

25 MR. GALLAGHER: Point of clarification.

1 Are you asking about Wenzel Drive or Guys Run Road?

2 THE WITNESS: The public road goes to the  
3 edge of the river.

4 BY MR. DUNLAP:

5 Q Wenzel Drive?

6 A That would be Guns Run Road goes to the  
7 river. Wenzel Drive comes across and intersects with  
8 it.

9 Q A roadway goes from Wenzel Drive down to  
10 the river?

11 A Correct.

12 Q How would -- you said the people park on  
13 the area north or towards the top of the map on the  
14 hatched area from Wenzel Drive. How would you  
15 describe that area?

16 A The hatched area is shown in the exhibit  
17 and it shows the gravel path which I testified to, and  
18 there on the left-hand side of it is some ground  
19 cover, a weed area. People can park down there, I am  
20 sure. They park down there obviously to go to the  
21 tavern. Some people pull in with their boats at the  
22 end of the public road and walk across there. They  
23 also go to it from the Harmar Marina and walk down the  
24 tracks at Eat'n Park.

25 Q Are cars ever allowed to park along the

1 roadway from Wenzel Drive down to the river?

2 A We don't park them along the side of the  
3 road. We allow cars to park on the left-hand side of  
4 Wenzel Drive. The public parks where they want to,  
5 anyway. People come down and park, and then go  
6 fishing, or whatever.

7 Q Now the Twelve Mile Island area that is  
8 shown partially on the bottom right part of the map?

9 A That is Twelve Mile Island. It runs the  
10 entire length of the map and it shows the cottages on  
11 that portion of it. There is a waterway in between.

12 Q So the people who have houses on that  
13 island, what boat launches do they use?

14 A There is a beautiful four foot width boat  
15 launch that has been constructed by the Pennsylvania  
16 Boat and Fish Commission. They also can launch at the  
17 Harmar Marina facility. And then you mentioned  
18 parking. We have a lot that people will park in the  
19 area. You can put a hundred plus cars in and it is  
20 bituminous covered.

21 Q By the area, where are you referring?

22 A It's the area right at the end where you  
23 see the houses. If you look at the marina on the  
24 exhibit, if you go to the right-hand side and see the  
25 last house there, the whole entire area, there is the

1 launch area and parking area. The other side of  
2 Wenzel Drive is also owned by the Pennsylvania Fish  
3 and Boat Commission, the Commonwealth of Pennsylvania,  
4 and there is a large parking area there also. The  
5 right-hand side curvataure of Wenzel Drive coming in,  
6 it is all parking. It is a tremendous asphalt area.  
7 I hasten to add that unfortunately there should be a  
8 little more green area in there.

9 Q The gravel area that you have described  
10 that is near the tavern and heading up towards the  
11 railroad tracks, you said the township maintains that  
12 township area?

13 A To this day, yes, we do. We can only give  
14 the safety up to the boundary line of Norfolk  
15 Southern; we can't give them anything in between.

16 Q Do you live in this area?

17 A Yes, along the railroad tracks in a place  
18 called Denny Estates, a half a mile away.

19 Q Would that be on this map?

20 A No. If you go approximately one half  
21 mile, that gives you a reference of how close I am to  
22 this whole area. I have lived there most of my life.  
23 In fact, our company owns that area.

24 Q What is your company?

25 A Lincoln Warehouses, Inc.

1 MR. DUNLAP: No further questions.

2 JUDGE CORBETT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MR. GALLAGHER:

5 Q For clarification, any pedestrian  
6 accidents involved within the Guys Run Road crossing?

7 A No, there has not been. It's one of the  
8 safest areas to cross on that line.

9 Q And going back to the responsibility for  
10 rebuilding and maintaining the crossing, you  
11 testified, I believe, that the township would be  
12 willing to rebuild the stairs and pave the orange  
13 crossing or the orange portion of Guys Run Road on  
14 Exhibit 1?

15 A Absolutely.

16 Q Everything except the right-of-way?

17 A Everything outside of the right-of-way.

18 Q You are willing to do that, but do you  
19 believe that you are required to do that under law or  
20 otherwise to do that?

21 A We are not saying we were required. We  
22 are saying we would do it in the interest of public  
23 safety. We believe this area should be used as a  
24 pedestrian crossing and also for access for bicycles  
25 and whatever else.

1           Q           Do you know how many residents live on  
2           Wenzel Drive?

3           A           I would say there are probably more people  
4           than you would expect. I anticipate probably 35  
5           people and upwards in the area. There is a lot of  
6           mutiple useage there, like one house that has two  
7           apartments in it. When you look at it, you would  
8           think it would be a normal house, but it is apartments  
9           upstairs. Next door would be two apartments, but it  
10          looks like one house. Above the tavern, there is a  
11          hotel kind of thing, different rooms up there. There  
12          is more people than you would think.

13          Q           Looking at Exhibit 1 at the very end of  
14          where Guys Run Road, the orange section of Guns Run  
15          Road meets Wenzel Drive, that is not a parking lot,  
16          normal parking lot?

17          A           No. There is not even a cul-de-sac there.  
18          I wish there was, but there is not.

19                   MR. GALLAGHER: I have no further  
20          questions.

21                   MR. DUNLAP: I am going to move to strike  
22          Mr. Seibert's comments about this crossing being one  
23          of the safest on the line. He is not an expert in  
24          safety, and he is not qualified as such, and he is  
25          giving his opinion in that regard.

1 JUDGE CORBETT: The objection is a little  
2 late and I am going to overrule it anyway. Mr.  
3 Salapa, any recross?

4 MR. SALAPA: I have one follow-up in light  
5 of counsel's question.

6 RECROSS EXAMINATION

7 BY MR. SALAPA:

8 Q Do you know how many people live either  
9 part-time or full-time on Twelve Mile Island?

10 A Yes. The summer during the three month  
11 period, I indicated there are hundreds of people in  
12 residence. Off season there are a few die hards that  
13 try to stay 12 months a year and I am not one of those  
14 types, although I did spend one New Years Eve there  
15 and I would never do that again. The ice cream didn't  
16 melt in the glass.

17 JUDGE CORBETT: Mr. Sharp?

18 MR. SHARP: No, Your Honor.

19 JUDGE CORBETT: Thank you, Mr. Seibert.  
20 You are excused, sir. Mr. Gallagher, are you moving  
21 for Harmar Exhibit 13?

22 MR. GALLAGHER: Yes, Your Honor.

23 JUDGE CORBETT: Any objection?

24 MR. SALAPA: No, Your Honor.

25 JUDGE CORBETT: So admitted.

1 (Whereupon, Harmar Township Exhibit No. 13 was  
2 admitted into evidence.)

3 JUDGE CORBETT: Next witness, Mr.  
4 Gallagher.

5 MR. GALLAGHER: Our next witness, if  
6 nobody objects after he is done being cross examined,  
7 I would ask if he could be excused. He has to go back  
8 to work after he is done here. The township would  
9 like to call Mr. James Anderson as the next witness.

10 JAMES W. ANDERSON  
11 having been duly sworn, testified under oath as  
12 follows:

13 DIRECT EXAMINATION

14 JUDGE CORBETT: Give us your full name  
15 and spell your last name.

16 THE WITNESS: James Wilson Anderson,  
17 A-n-d-e-r-s-o-n.

18 JUDGE CORBETT: Mr. Gallagher.

19 BY MR. GALLAGHER:

20 Q Mr. Anderson, where do you currently  
21 reside?

22 A 2524 Wenzel Drive, Harmar Wownship.

23 Q How long have you lived there?

24 A Since September of 2001.

25 Q Before moving to Wenzel Drive in 2001,

1 have you ever been to Wenzel Drive before?

2 A All of my 39 years. The house I currently  
3 live in is my grandfather's house and we used to go  
4 visit my grandfather.

5 Q You have been there your whole life?

6 A Yes, sir.

7 Q You see the crossing on -- do you have  
8 Exhibit 1?

9 A No.

10 Q Where is your house located on this map,  
11 on Exhibit 1?

12 A If you look right where the map is, the  
13 middle of Prasnicar's Tavern, my house is actually  
14 three up. There is a lot, there is one rectangle and  
15 open lot. That is actually my yard. I have a big yard  
16 called the field. I am next to Harmar Marina.

17 Q Do you use the crossing on a daily basis?

18 A Yes, I do. At least twice a day I catch  
19 a bus to the Eat 'n Park and and in the afternoon I  
20 catch it back over to get to my residence.

21 Q Is that the only way you can get to work?

22 A I could drive to work but I am not rich  
23 enough to have pay the parking, so I take a bus.

24 Q So you depend on the bus to get to work  
25 everyday?

1           A           Yes, that is correct.

2           Q           Do you use the crossing any other time  
3 besides access to the bus stop?

4           A           Yes. There happens to be south of the  
5 area of Guys Run Road is Brusters. My wife, and  
6 myself, and baby go for ice cream, and we go to Eat 'n  
7 Park and Fun Fest for a night of bowling with our  
8 church group.

9           Q           Do you feel that you you can safely access  
10 that bus stop at any other point on this map aside  
11 from the pedestrian crossing at Guys Run road?

12          A           Are you asking can I get to that bus stop  
13 a safer way without going where I currently go?

14          Q           Correct.

15          A           In my opinion, no. Only because I have to  
16 go to the other end of Wenzel Drive to attempt to go  
17 to the Giant Eagle, and trying to drive across Wenzel  
18 Drive is actually five lanes of traffic, and they are  
19 coming pretty good.

20          Q           Have you ever seen anybody else besides  
21 pedestrians use the crossing; have you ever seen  
22 bicycles?

23          A           I have taken my bicycles across. I know  
24 the neighbor across the street, Leslie, in the trailer  
25 rides his bike across there frequently. There is

1 another gentleman that lives at the end of the street.  
2 He rides his bike.

3 MR. DUNLAP: I object unless he has seen  
4 this personally. This is heresay.

5 THE WITNESS: I can testify that I  
6 personally carried my bike across the track and down  
7 the street. My neighbor across the street carried his  
8 bike down the steps.

9 JUDGE CORBETT: I think the objection is  
10 -- let me put it this way. Have you seen this  
11 yourself, sir?

12 THE WITNESS: Yes.

13 JUDGE CORBETT: The objection is  
14 overruled.

15 Q Since the time you said you have visited  
16 there your whole life, have you ever felt as though  
17 you were trespassing going over this pedestrian  
18 crossing at Guys Run Road?

19 A No. There has never been anyone there to  
20 tell us you can't go there. There has not been any  
21 wires stretched across. The United Methodist Church  
22 is right beneath Eat 'n Park on Guys Run Road and  
23 Sunday morning, it was routine that father drive us  
24 down, drop us off to visit grandpa. We would go over  
25 the tracks, as long as I remember, for 39 years.

1 There has been no trespassing signs, no barriers,  
2 nothing to prohibit us from that crossing.

3 Q When the trains are approaching the  
4 Allegheny Valley Joint Sewer Authority crossing, do  
5 the trains usually sound off?

6 A The trains sound off. I can't tell you if  
7 the sound goes off for that where I live. I can tell  
8 you I have see the trains south of Hulton Bridge and  
9 they sound their whistle the whole way up the river.

10 JUDGE CORBETT: For those who are maybe  
11 not familiar with the area, where the is the Hulton  
12 Bridge?

13 A The Hulton Bridge would be off your map to  
14 the left of this AVJSA access drive. The bridge  
15 actually goes over the railroad and they would be  
16 sounding somewhere down in there. Where, I don't  
17 know.

18 JUDGE CORBETT: The Hulton Bridge is  
19 across the Allegheny River?

20 A That is correct, sir.

21 Q Do the trains ever sound off after the  
22 Allegheny Valley Joint Sewer Authority but before the  
23 Guys Run Road crossing, that you are aware of?

24 A Yes.

25 Q And have you ever had any accidents using

1 the crossing?

2 A I actually fell three times. Once was my  
3 fault. When we first moved in, the steps on the  
4 other side were in such disrepair that when it snows,  
5 you can't tell where the steps begin and where the  
6 steps actually are. The first time I fell, I got up  
7 and figured I fell, so what, and went on my business.  
8 I fell last week again because of the snow and once  
9 during the summer, trying to maintain the area because  
10 of the weeds. While I was weed wacking, I slipped and  
11 fell on the stairs again, but that was my fault.

12 Q But those happened because of the  
13 maintenance of the stairs?

14 A That is correct.

15 Q Not because of the train tracks?

16 A No.

17 MR. GALLAGHER: That is all I have.

18 JUDGE CORBETT: Mr. Salapa?

19 MR. SALAPA: I have no cross, Your Honor.

20 JUDGE CORBETT: Mr. Sharp?

21 MR. SHARP: I have nothing, Your Honor.

22 JUDGE CORBETT: Mr. Dunlap?

23 MR. DUNLAP: I have one question.

24 CROSS EXAMINATION

25 BY MR. DUNLAP:

1           Q           In the past in the winter time, you  
2 mentioned about falling and couldn't see down the  
3 steps because of the snow and so forth. Have those  
4 steps ever been maintained in the past as far as  
5 somebody shoveling snow and so forth?

6           A           The two years I have been down there, I  
7 haven't seen it. In fact, I wrote a letter to Conrail  
8 and to the township telling them that I had fallen and  
9 the steps were a potential lawsuit when it happened.  
10 I never did hear back from the railroad, but I did  
11 hear from Mr. Seibert, the township supervisor. He  
12 provided me a letter saying we would look into it and  
13 from then on we progressed to today.

14                   MR. DUNLAP: Thank you.

15                   JUDGE CORBETT: Any recross?

16                   MR. GALLAGHER: I don't have anything.

17                   JUDGE CORBETT: Thank you; you are  
18 excused.

19                   JUDGE CORBETT: Mr. Gallagher?

20                   MR. GALLAGHER: The township would like to  
21 call as its next witness, Mr. Larry Seiler.

22                               LAWRENCE A. SEILER

23 having been duly sworn, testified under oath as  
24 follows:

25                                       DIRECT EXAMINATION

1 JUDGE CORBETT: Give us your full name and  
2 spell your last name.

3 THE WITNESS: Lawrence August Seiler,  
4 S-e-i-l-e-r.

5 BY MR. GALLAGHER:

6 Q Mr. Seiler, what is your occupation?

7 A I am an engineer, civil engineer.

8 Q Are you employed by the township of  
9 Harmarville?

10 A I am employed by Senate Engineering who is  
11 appointed by the township engineer.

12 Q And if you could refer to Exhibit 1, are  
13 you familiar with the crossing at Guys Run Road?

14 A Yes.

15 Q Are you familiar with the crossing at the  
16 Allegheny Valley Joint Sewer Authority?

17 A Yes.

18 Q If you could take a look at the pictures  
19 at 5B and 5C, can you tell me what the sight distance  
20 is starting with 5B? Do you know what the sight  
21 distance would be if you were walking the railroad  
22 tracks?

23 A I do know it. I have it written down.  
24 If I could have access to my brief case?

25 JUDGE CORBETT: All right. You may, sir.

1                   THE WITNESS: Referring to Exhibit 5B,  
2                   the sight distance standing on the Allegheny Valley  
3                   Sewage Authority crossing and looking to the east,  
4                   that sight distance is approximately six hundred feet.

5                   Q           And if you look at 5C, I believe this is  
6                   standing at the same crossing just looking towards  
7                   Pittsburgh?

8                   A           Looking to the west on the same crossing,  
9                   that sight distance is approximately eight hundred  
10                  feet.

11                  Q           Now, if I could turn your attention to  
12                  pictures 8 E and 8 F. I believe picture 8 E is  
13                  standing at the crossing at Guys Run Road facing the  
14                  Allegheny Valley Joint Sewer Authority crossing and  
15                  can you tell me what the sight distance is?

16                  A           Looking to the west, that is approximately  
17                  eight hundred feet.

18                  Q           And in picture 8 F, that would be looking  
19                  the other way?

20                  A           That sight distance is 1,250 feet.

21                  Q           And in your opinion would the sight  
22                  distance be better at the Guys Run Road crossing than  
23                  the Allegheny Valley Joint Sewer Authority crossing?

24                  A           Yes.

25                  Q           And I see there is some vegetation.

1       Actually comparing picture 8 E, which is during the  
2       summertime, with picture 8 C, I believe that is the  
3       same direction. One has those trees and brush growing  
4       and the other one is bare.

5                   In your opinion, does this vegetation  
6       during the summer significantly impair the sight  
7       distance at the crossing?

8           A       It reduces it, yes.

9           Q       Significantly?

10          A       Significantly, yes. It should be cut  
11       back.

12          Q       And how much, how far would it have to be  
13       cut back?

14          A       There are many small trees. If you can  
15       cut it back, actually the trees could be totally  
16       removed. Again those small scrub trees, you could  
17       eliminate them totally and that would improve the  
18       sight distance to the west.

19          Q       But still even with the trees, the sight  
20       distance would still be better than it is at the  
21       Allegheny Valley Joint Sewer Authority?

22          A       Yes, it would.

23                   MR. DUNLAP: For clarification, which  
24       photos are you looking at?

25                   MR. GALLAGHER: 8 E.

1 JUDGE CORBETT: 8 C and 8 E, I believe.

2 MR. GALLAGHER: Yes.

3 Q What is the distance between Allegheny  
4 Valley Joint Sewer Authority and the Wenzel Drive  
5 crossing on Exhibit 1?

6 A You would have to add the two distances  
7 there, so it would be a total of 1,012 feet and 1,283  
8 feet, which is 2,295, I think was the addition.

9 Q Is that about four tenths of a mile?

10 A Close, yes. A mile, though, is 5,280  
11 feet.

12 Q And if I was standing at the end of Guys  
13 Run Road, where the orange is indicated, meeting  
14 Wenzel Drive --

15 A Okay.

16 Q And if this crossing did not exist and I  
17 was standing there, can you tell me how far I would  
18 have to walk to access the bus stop at Eat 'n Park?

19 A That if that crossing wasn't there, my  
20 answer would be you walk down the length of Wenzel  
21 Drive and back along Freeport Road to Guys Run Road,  
22 that would be twice the distance of approximately  
23 nearly three thousand feet, would be my estimate.

24 MR. GALLAGHER: That is all I have.

25 JUDGE CORBETT: Mr. Salapa?

1 MR. SALAPA: No questions.

2 JUDGE CORBETT: Mr. Sharp?

3 MR. SHARP: No questions, Your Honor.

4 JUDGE CORBETT: Mr. Dunlap?

5 MR. DUNLAP: A couple of questions.

6 CROSS EXAMINATION

7 BY MR. DUNLAP:

8 Q Mr. Seiler, referring to photos 8 C and 8  
9 D, would you not agree with me that the sight  
10 distances at what he is referring to as the Guys Run  
11 Road crossing are severely limited during times of  
12 snowy weather?

13 A I have not been down there during snowy  
14 weather so I couldn't answer that.

15 Q In general, does snowy weather reduce the  
16 distance that you can see?

17 A In general. In most cases, everywhere.

18 Q How about fog?

19 A Again I haven't been down during the foggy  
20 period, but in general, fog reduces sight distances.

21 Q The same as rain?

22 A I would have to say the same as.

23 Q To your knowledge, sir, has the township  
24 ever looked into working with the -- I am sorry -- is  
25 the PAT bus line in that area, moving a bus stop or

1 establishing a bus stop at the intersection of  
2 Freeport Road and Wenzel Drive?

3 A I have no knowledge of that.

4 MR. DUNLAP: Thank you, I have nothing  
5 further.

6 JUDGE CORBETT: You are excused.

7 JUDGE CORBETT: Mr. Gallagher?

8 MR. GALLAGHER: Dolores Prasnikar.

9 DOLORES J. PRASNIKAR

10 having been duly sworn, testified under oath as  
11 follows:

12 DIRECT EXAMINATION

13 JUDGE CORBETT: Please state your name and  
14 spell your last name for the court reporter.

15 THE WITNESS: Dolores Jean Prasnikar,  
16 P-r-a-s-n-i-k-a-r.

17 JUDGE CORBETT: Mr. Gallagher you may  
18 proceed.

19 BY MR. GALLAGHER:

20 Q Mrs. Prasnikar, do you reside on Wenzel  
21 Drive?

22 A Yes.

23 Q How long have you lived there?

24 A 51 years.

25 Q Do you own a business there?

1 A Yes, I do.

2 Q What is the business?

3 A Prasnikar's Tavern.

4 Q How long has the tavern been opened?

5 A 51 years.

6 Q How long have you worked there?

7 A Since I was in college. Probably -- I  
8 worked my way through college -- about 40 years plus.

9 Q Do you serve alcohol there?

10 A Yes.

11 Q Food?

12 A Yes, bar food.

13 Q Do people come over to eat from Freeport  
14 Road?

15 A Not actually. We are a local tavern and  
16 people basically come to drink, although we do have  
17 food if necessary, and people do go to Eat 'N Park to  
18 eat or the Ponderosa.

19 Q Do you use the crossing at Guys Run Road?

20 A Occasionally.

21 Q Do you ever walk across the crossing at  
22 Wenzel Drive?

23 A No.

24 Q Why not?

25 A I don't want to dodge four lanes of

1 traffic.

2 Q Do your patrons use the crossing, ever?

3 A At Guns Run?

4 Q Yes.

5 A Yes, often.

6 Q At least once daily, maybe?

7 A My manager uses it every morning to go to  
8 the Eat 'n Park for breakfast and goes over in the  
9 evening. We have several customers that come back and  
10 forth.

11 Q At least -- is this a fair question to ask  
12 -- at least once a day there are two crossings?

13 A Absolutely.

14 Q So 36 days would be 730 crossings?

15 A Yes.

16 Q You have been there for 40 years?

17 A 51 years.

18 Q You have been working there for 40 years?

19 A Yes.

20 Q From people coming and going across the  
21 crossing using your tavern or coming to your tavern,  
22 that would be about 29,200 at a minimum of coming and  
23 going from your tavern?

24 A I would imagine so.

25 Q And have any accidents ever happened from

1 any of the patrons using the pedestrian crossing  
2 coming to or leaving your business?

3 A No, not to my knowledge.

4 Q Can you give me an estimate in your  
5 opinion of how much daily traffic there is at the Guys  
6 Run Road crossing?

7 A Pedestrian traffic, probably 10 to 12  
8 people use it a day from our street or our customers.  
9 That is during normal months of the year. And then in  
10 the summer time we have people from the island come  
11 over, dock their boats at our tavern, boat dock place,  
12 and go over to the restaurants. So it increases in the  
13 summer.

14 Q And it is just not used by the people in  
15 Wenzel Drive?

16 A No.

17 Q Do any of the businesses or I see there is  
18 a motel; do any of these people come over to your  
19 tavern?

20 A Yes, they do. As a matter of fact, a few  
21 workers come over from the Valley Motel and a couple  
22 of them from the Eat 'n Park. Some of them are  
23 walkers, some of them don't own cars.

24 Q Do you believe your business would suffer  
25 if this crossing did not exist?

1           A        Yes, I do most definitely.

2           Q        Are you you opposed to the closing of this  
3 crossing?

4           A        Yes, I am. I am very adamant about it.  
5 (Whereupon, Harmar Township Exhibit No. 14 was marked  
6 for identification.)

7           Q        If you could turn to tab 14. Do you  
8 recognize this document?

9           A        Yes. That is a petition that I had  
10 circulated with the help of some of my good neighbors.  
11 We had circulated this last year.

12          Q        What was the reason for circulating this  
13 petition?

14          A        To keep the crossing opened.

15          Q        How many signatures did you get; do you  
16 know?

17          A        Approximately a hundred. They are not all  
18 here. Here they are.

19          Q        I see there are people who have signed and  
20 put their address that don't live on Wenzel Drive, so  
21 I take it --

22          A        Well, sometimes people don't live on  
23 Wenzel Drive, but for example, some of them might go  
24 to the bowling alley and somebody comes to bowl, and  
25 they want to come over and have a drink or two, and

1 they have used that crossing from time to time.

2 MR. GALLAGHER: Your Honor, I would like  
3 to move this petition into evidence as Exhibit 14.

4 JUDGE CORBETT: Any objection?

5 MR. DUNLAP: No objection, but can we go  
6 off the record a second?

7 JUDGE CORBETT: Yes.

8 (Discussion off the record.)

9 JUDGE CORBETT: Hearing no objection, the  
10 exhibit will be admitted.

11 (Whereupon, Harmar Township Exhibit No. 14 was  
12 admitted into evidence.)

13 JUDGE CORBETT: Back on the record.

14 MR. GALLAGHER: I have a couple more  
15 questions for you.

16 BY MR. GALLAGHER:

17 (Whereupon, Harmar Township Exhibit No. 15 was marked  
18 for identification.)

19 Q Turning to tabe 15, that is a deed that  
20 was recorded in Allegheny County and it describes a  
21 parcel of land on Wenzel Drive. If you could look at  
22 the second paragraph, beginning with "beginning," what  
23 is the road that is referenced in that paragraph?

24 A Guys Run Road.

25 Q What is the date of the deed?

1           A           20th day of June, 1985.

2                       MR. GALLAGHER: Your Honor, the township  
3 would like to move this into evidence as township  
4 exhibit 15. I am not sure we identified it properly.

5           Q           Is this the property that you currently  
6 own on Wenzel Drive?

7           A           No. This is the property that my brother  
8 currently owns. It was deeded from my mother to my  
9 brother.

10                      JUDGE CORBETT: Is this where the tavern  
11 is located?

12           A           No.

13                      MR. DUNLAP: I object to its admission  
14 simply on relevance. It refers to Guys Run Road. We  
15 are not opposing or saying that the bottom part of  
16 Guys Run Road is not --I don't see that it has any  
17 relevance whatsoever.

18                      JUDGE CORBETT: I see it might have some  
19 relevance so we are going to admit it. We are are  
20 going to admit it. The objection is overruled.

21 (Whereupon, Harmar Township Exhibit No. 15 was  
22 admitted into evidence.)

23 BY MR. GALLAGHER:

24           Q           I understand you own a couple properties  
25 on Wenzel Drive or you used to?

1           A           I own the tavern and home on Wenzel. We  
2 did own or I did own some property on Wenzel that was  
3 sold.

4           Q           Who did you sell the property to?

5           A           Kratsa, Inc.

6           Q           Do you know what Kratsa, Inc. is?

7           A           Development Company.

8           Q           This tract that was just sold to Kratsa,  
9 is this undeveloped property?

10          A           Yes, it is.

11          Q           Thank you.

12          A           You are welcome.

13                    JUDGE CORBETT: Anything more?

14                    MR. GALLAGHER: No more questions.

15                    JUDGE CORBETT: Mr. Salapa?

16                    MR. SALAPA: I have some follow-up, yes.

17                                CROSS EXAMINATION

18           BY MR. SALAPA:

19           Q           The property that you sold to the  
20 development company, is it depicted on this Exhibit 1  
21 at all?

22           A           It was down in this area here.  
23 (indicating)

24           Q           It is to the left of Guys Run Road as  
25 depicted on the map and it would be south of the

1 railroad tracks?

2 A Right along the river right here. It  
3 would be this area right through here. (indicating)

4 MR. SALAPA: Your Honor, could we note for  
5 the record that the witness is referring to a portion  
6 of property that is, I think, right in the middle of  
7 it it has the writing Guys Run Road crossing?

8 Q Is that the general area?

9 A Right through here, yes.

10 MR. SALAPA: Thank you.

11 JUDGE CORBETT: The record will so reflect  
12 the fact.

13 MR. SALAPA: That is all that I have, Your  
14 Honor.

15 JUDGE CORBETT: Mr. Sharp?

16 MR. SHARP: I have nothing, Your Honor.

17 JUDGE CORBETT: Mr. Dunlap?

18 MR. DUNLAP: I have no questions.

19 JUDGE CORBETT: Anything further, Mr.  
20 Gallagher?

21 MR. GALLAGHER: Two more, Your Honor. I  
22 would like to call Mr. Burkhart as the next witness.

23 KENNETH BURKHART

24 having been duly sworn, testified under oath as  
25 follows:

1 DIRECT EXAMINATION

2 JUDGE CORBETT: Give us your full name and  
3 spell your last name for the court reporter.

4 THE WITNESS: Kenneth Timothy Burkhart,  
5 B-r-u-k-h-a-r-t.

6 JUDGE CORBETT: Mr. Gallagher, you may  
7 proceed.

8 BY MR. GALLAGHER:

9 Q Mr. Burkhart, where do you reside?

10 A 2526 Wenzel Drive. I am next door  
11 neighbor to Mr. Anderson.

12 Q Maybe it would help opposing counsel if  
13 you could mark on the exhibit where you live.

14 A Where it says Harmar Marina.

15 Q Do you work at the marina?

16 A Yes, sir.

17 Q How long have you worked there?

18 A I bought the marina in 1996, but I worked  
19 there probably the last 35 or 40 years.

20 Q The people who use the marina, are they  
21 just residents of Wenzel Drive?

22 A No, sir.

23 Q Who else uses your marina?

24 A I have people from the Twelve Mile Island  
25 use it. I have people that are what I call transit

1 dockers that come from Kitanning or East Brady, and  
2 come down the river for a Saturday and stay at my  
3 place, dock their boat and find some place to eat,  
4 some place to live and stay over night.

5 Q And is your marina the main marina that  
6 residents on Twelve Mile Island would use to access  
7 the township?

8 A Yes.

9 Q Do you believe your business would suffer  
10 if the pedestrian crossing at Guys Run Road did not  
11 exist?

12 A I would say yes.

13 Q Do you use the crossing yourself?

14 A Yes, I do.

15 Q Do you feel safe using the crossing at  
16 Guys Run Road?

17 A The steps are in bad shape because there is  
18 no flat surface in there. It is dangerous.

19 Q Do you ever use the crossing at Wenzel  
20 Drive for pedestrian purposes?

21 A No, sir.

22 MR. GALLAGHER: I have no further  
23 questions.

24 JUDGE CORBETT: Mr. Salapa?

25 CROSS EXAMINATION

1 BY MR. SALAPA:

2 MR. SALAPA: How often do you use the  
3 crossing at Guys Run road?

4 A Normally I take a walk for health purposes  
5 and I use that at least four or five times a week.  
6 Occasionally, if I need parts from the Advanced Auto  
7 Parts, I will walk over rather than drive and use the  
8 crossing.

9 MR. SALAPA: Thank you.

10 JUDGE CORBETT: Mr. Sharp?

11 MR. SHARP: One or two.

12 CROSS EXAMINATION

13 BY MR. SHARP:

14 Q Is your marina facility just as a boat  
15 dock or is it also as a boat launch?

16 A Just a boat dock. It was a launch at one  
17 time but I don't have the space available anymore.

18 JUDGE CORBETT: Mr. Dunlap?

19 CROSS EXAMINATION

20 BY MR. DUNLAP:

21 Q Would it be fair to say your patrons come  
22 in to use your facility, your business, by car or by  
23 boat?

24 A Yes.

25 MR. DUNLAP: That is all.

1 JUDGE CORBETT: Mr. Gallagher. One  
2 follow-up question.

3 REDIRECT EXAMINATION

4 BY MR. GALLAGHER:

5 Q Do patrons that come by boat and dock at  
6 your marina, is there a reason why they would  
7 specifically come to your marina as opposed to any  
8 other marina; is there anything in the area?

9 A As far as a motel, hotel facilities and  
10 restaurant, no, not that I know of. Other areas that  
11 they have to access in the area would be Oakmont Yacht  
12 Club, which is a private club, and the Fox Chapel  
13 Yacht Club. It is a public facility, probably, I  
14 don't know.

15 Q Some of your customers, do they come over  
16 specifically just to maybe go over to Eat 'n Park or  
17 Ponderosa to eat?

18 MR. DUNLAP: I object to the question as  
19 leading the witness.

20 JUDGE CORBETT: It is leading. I will  
21 sustain.

22 Q Do any of your patrons come over for any  
23 reason other than just to stay at the marina?

24 A Some of them come over to eat at the Eat  
25 'n Park, or Brusters, or whatever.

1 MR. GALLAGHER: No further questions.

2 JUDGE CORBETT: Mr. Salapa?

3 MR. SALAPA: No, Your Honor.

4 JUDGE CORBETT: Mr. Sharp?

5 MR. SHARP: No, Your Honor.

6 JUDGE CORBETT: Thank you for coming in.

7 MR. GALLAGHER: The township would like to  
8 call George Kidzus.

9 GEORGE KIDZUS

10 having been duly sworn, testified under oath as  
11 follows:

12 DIRECT EXAMINATION

13 JUDGE CORBETT: Give us your full name and  
14 spell your last name for the court reporter.

15 THE WITNESS: George Kidzus, K-i-d-z-u-s.

16 JUDGE CORBETT: Mr. Gallagher, you may  
17 proceed.

18 BY MR. GALLAGHER:

19 Q Mr. Kidzus, where do you live currently?

20 A I live at 2534 Wenzel Drive. I also own  
21 an acre across the street from where I live.

22 Q How long have you lived on Wenzel Drive?

23 A I was born two doors from where I lived.  
24 I lived there until I was 18. I was away for a few  
25 years. I have been back since '54.

1 Q But do you have any family history  
2 involved with Wenzel Drive?

3 A Henry Wenzel was my grandfather. At that  
4 time they -- he owned the whole street at one time.

5 Q And that partition that we were looking  
6 at, Exhibit 13, this was your father's or  
7 grandfather's?

8 A Yes. Number 6 was my partition.

9 Q You heard testimony earlier that before  
10 the 1930 Order changing this pedestrian crossing on  
11 Exhibit 1, the orange section from a vehicle crossing  
12 to a deed crossing, do you remember what Guys Run Road  
13 was before?

14 A I do. I remember when you could come  
15 across Guys Run Road and walk across the crossing,  
16 which was Guys Run Road, clear to the river.

17 I recall the time the railroad has a  
18 ballast and raised it, and as it got higher, it was no  
19 longer able to go up with the cars and they moved the  
20 crossing twice so far.

21 Q So the railroad tracks were not always  
22 this height?

23 A No.

24 Q And since 1930 when they changed or  
25 altered the crossing in Guys Run Road, was it also

1 opened to the public?

2 A Yes.

3 Q If you could turn to tab 17 or 16, I am  
4 sorry.

5 (Whereupon, Harmar Township Exhibit No. 16, was marked  
6 for identification.)

7 Q Do you recognize this document?

8 A I do.

9 Q And can you tell me what it is?

10 A It's a map of Wenzel Drive. It shows the  
11 pedestrian crossing.

12 Q Down in the right-hand corner, can you  
13 read that portion?

14 A At what point?

15 Q It starts " The Pennsylvania".

16 A Lease of property to Joseph H. Meyers,  
17 June 6, 1950.

18 Q Who is leasing the property to Joseph  
19 Meyers?

20 A The Pennsylvania Railroad Company, Central  
21 Region.

22 Q How did you come across this document?

23 A My father bought all of the rest of the  
24 railroad property that was available, including that  
25 track, and he was, Meyers was still renting it. He

1 was using it as a parking lot. And that is how we got  
2 it at that time.

3 Q What year was this?

4 A June 6, 1950.

5 Q And there is two public roads listed on  
6 here. Would the public road on the bottom right here,  
7 would this be currently what is Wenzel Drive?

8 A Yes, it is.

9 Q And there is a public road right here;  
10 what would this be?

11 A Guys Run Road.

12 Q There is a rail line here, the Conemaugh  
13 Division?

14 A Right.

15 Q Is that the current rail line right now?

16 A Yes, it is.

17 Q And it says public road going all the way  
18 through the entire portion?

19 A Right.

20 MR. GALLAGHER: Those are all of the  
21 questions I have. I am sorry, Your Honor, I'd like to  
22 move this into evidence as Township Exhibit 16.

23 JUDGE CORBETT: Any objection? It will be  
24 so admitted.

25 (Whereupon, Harmar Township Exhibit No. 16 was

1 admitted into evidence.)

2 JUDGE CORBETT: Mr. Salapa?

3 MR. SALAPA: I have one question just for  
4 my own edification.

5 CROSS EXAMINATION

6 BY MR. SALAPA:

7 Q In looking at Exhibit 16, I note that  
8 there appears to be a rail line that runs off and  
9 crosses what was then Guys Run Road and it appears  
10 that it goes over to a business?

11 A That is right.

12 Q Do you know if there was a business there  
13 at one time?

14 A Yes, the bottling works was over there and  
15 the railroad car would cross 28 and go over there.

16 Q Do you happen to know what bottling plant  
17 that was?

18 A Red Raven. Billy Baxter's Red Raven.

19 Q And so at some point after this map was  
20 made, that whole siding and everything was taken out?

21 A That is right.

22 MR. SALAPA: Thank you. That is all I  
23 have.

24 JUDGE CORBETT: Mr. Sharp?

25 MR. SHARP: Just a few questions, Your

1 Honor.

2 CROSS EXAMINATION

3 BY MR. SHARP:

4 Q You mentioned that you left and that you  
5 moved back to the area in '54?

6 A I was never away from the area. My  
7 grandmother always owned two houses on the street. My  
8 family, like I said, my great grandfather owned all of  
9 the street. I have never really been away from it.  
10 Just when I was 18, we moved, but we still had access  
11 to this house and this property next door to it.

12 Q In your experience in all of the time that  
13 you have lived there, and let's say at the time of  
14 this making of this map in 1950, would it be correct  
15 to say that at that time the pedestrian crossing was  
16 in place and in use?

17 A And was in good repair, I would say.

18 Q Were there stairs in 1950 as depicted for  
19 today, as they look like in the picture today?

20 A When the stairs were put in, they were in  
21 good repair. I haven't used it lately because I  
22 wouldn't take a chance.

23 Q But the stairs were always there?

24 A Yes.

25 Q At that time, back between 1950 and '54,

1 at the time of this map, the section of the map where  
2 it says public road, Guys Run Road, was that paved  
3 like at that time or was it gravel like it is today?

4 A Guys Run Road was always gravel.

5 MR. SHARP: Thank you.

6 JUDGE CORBETT: Mr. Dunlap?

7 MR. DUNLAP: No questions.

8 JUDGE CORBETT: Any redirect?

9 MR. GALLAGHER: No, Your Honor.

10 JUDGE CORBETT: Thank you very uchh for  
11 coming in. You are excused. Anything further, Mr.  
12 Gallagher?

13 MR. GALLAGHER: No. The township rests.

14 JUDGE CORBETT: Off the record.

15 (Discussion off the record.) Back on the record. We  
16 will go with the railroad next, I think. Mr. Dunlap.

17 MR. DUNLAP: I would like to call Mr.  
18 James Rockney to the stand, please.

19 JAMES ROCKNEY

20 having been duly sworn, testified under oath as  
21 follows:

22 DIRECT EXAMINATION

23 JUDGE CORBETT: Give us your full name and  
24 spell your last name for the reporter.

25 THE WITNESS: James Lewis Rockney,

1 R-o-c-k-n-e-y.

2 JUDGE CORBETT: Mr. Dunlap.

3 MR. DUNLAP: Thank you.

4 BY MR. DUNLAP:

5 Q By whom are you employed?

6 A Norfolk Southern Railway Corporation.

7 Q What is your business address?

8 A Suite 301, Holiday Drive, Two Foster  
9 Plaza, Pittsburgh, Pennsylvania 15220.

10 Q What is your job title?

11 A Assistant Division Engineer of Structures,  
12 Pennsylvania Division.

13 Q What are your duties in that job?

14 A Construct, maintain, and inspect railroad  
15 bridges, structures and track.

16 Q And how long have you held that position?

17 A 13 years.

18 Q How long have you been with Norfolk  
19 Southern?

20 A 29 plus years.

21 Q No, at Norfolk Southern.

22 A Oh, Norfolk Southern since 1999, so that  
23 would have been almost five years.

24 Q Am I correct that you previously held the  
25 same position with, it would have been Conrail?

1 A Conrail Corporation, yes.

2 Q How long did you work for Conrail?

3 A Well, Conrail, from 1976 until 1999 and  
4 prior to that, it was Penn Central. I hired on in  
5 1974 at Penn Central Railroad.

6 Q Can you give us a brief summary of your  
7 previous position with the railroad?

8 A I have been in the present position for 13  
9 years as assistant division engineer. Prior to that,  
10 I had one year of engineer of structures, 7 years of  
11 supervisor structures, and 7 years of assistant  
12 supervisor structures.

13 Q What is your educational background?

14 A I am a civil engineer and also a  
15 professional engineer in the State of Pennsylvania,  
16 Commonwealth of Pennsylvania.

17 Q Are you authorized to testify on behalf of  
18 Norfolk Southern Railway Company in these proceedings  
19 today?

20 A Yes, I am.

21 Q Are you familiar with the crossing at  
22 issue in this proceeding?

23 A Yes, I am.

24 Q The Commission has directed a number of  
25 questions to Norfolk Southern and we will go through

1 those, and get your answer, and add some other  
2 evidence that we have discussed. What is the exact  
3 corporate name and the operator of the line of  
4 railroad that is involved in the subject highway  
5 crossing?

6 A Pennsylvania Lines, LLC is the owner. And  
7 the operator is Norfolk Southern Railway Company.

8 Q How many tracks are located at the  
9 crossing?

10 A One track at that location.

11 Q What is the volume, class, and approximate  
12 speed over these tracks?

13 A Well, the volume is 16 trains a day. It  
14 is a class 3, 40 mile an hour railroad and tonnage  
15 wise we are looking at 4.5 million gross tons travel  
16 over that line a year.

17 Q And what kind of traffic is on the line?

18 A There is mainly some coal traffic, coal  
19 trains. There is grain trains intermixed and some  
20 local scrap from the train traffic.

21 Q What is the average length of these  
22 trains?

23 A Well, the average coal train is a 130 car  
24 length, and of that is probably the majority of the  
25 traffic is coal. So we are looking at 80 feet on a

1 car length. So you multiply that by 130.

2 Q Approximately how much of that would be as  
3 far as could you say relate to it a mile, more than a  
4 mile?

5 A It's more than a mile. Some trains  
6 stretch out more than a mile.

7 Q Do you have any idea how long it takes a  
8 train to stop if it's a mile long?

9 A Again, depending on the weather, it is all  
10 based on friction, so you get a rainy condition and it  
11 it is over a mile, more than a mile at times based on  
12 the conditions.

13 Q And we are talking about a train going 40  
14 miles an hour which is authorized on this track?

15 A Yes.

16 Q Are there any changes in operation  
17 contemplated in the foreseeable future on this line?

18 A I would say, if any, it is going to  
19 increase due to the coal traffic that will be with the  
20 different power generation plants that are Shelocta  
21 and Homer City.

22 Q Now the next question, Norfolk Southern  
23 has been asked to submit a typical cross section plan  
24 of the subject crossing area. I will pass out Norfolk  
25 Southern Exhibit No. 1.

1 JUDGE CORBETT: It will be so marked and  
2 identified.

3 (Whereupon, Norfolk Southern Exhibit No. 1 was marked  
4 for identification.)

5 Q Do you recognize this document?

6 A Yes.

7 Q Would you please identify it for the  
8 record.

9 A This is a cross section of the pedestrian  
10 crossing as so noted and it is approximately at mile  
11 post 64.9 on your Conemaugh line.

12 Q Would you please describe the important  
13 features on this section of plan?

14 A Well, it shows our center line of track.  
15 And to the right of the drawing is the center line of  
16 Wenzel Lane, 155 feet from that center line of track,  
17 and then to the left of the center line of track is  
18 the top of the existing stairway, and then seven more  
19 feet, we regress to the bottom of the stairwell, and  
20 then 42 feet from center line is the center line of  
21 Freeport Road or Old Route 28, and the difference in  
22 elevation between the top of rail and actually both  
23 Wenzel Lane and Old Route 28 is approximately six  
24 feet.

25 Q So it goes up six feet within how many

1 feet?

2 A Well, on the Wenzel roadside, it is 155  
3 feet. On the Old Route 28 over the Freeport Road  
4 side, it is approximately a six foot rise in a seven  
5 foot distance.

6 Q How would you characterize such a rise?

7 A It is a steep rise. It's a little out of  
8 porportion because of the distances, but the scaling  
9 would have been hard to get a scale correct, but it is  
10 a typical cross section.

11 Q Who prepared this map?

12 A My supervisor.

13 Q That is under your direction and control?

14 A Yes, it is.

15 Q I'd like to now refer to what has been  
16 marked for identification as Norfolk Southern Exhibit  
17 No. 2.

18 JUDGE CORBETT: It will be so marked and  
19 identified.

20 (Whereupon, Norfolk Southern Exhibit No. 2 was marked  
21 for identification.)

22 A Do you recognize this document?

23 A Yes. It shows a map similar to what was  
24 entered earlier today. It shows under Harmarville  
25 the pedestrian crossing and also to the very far right

1 is Wenzel Lane designated as the public road. And it  
2 also shows Freeport Road above the railroad tracks or  
3 north of the tracks. This would be to the right of  
4 this is an easterly railroad direction and to the left  
5 would be be a westerly direction railroad wise.

6 Q Where did you obtain this map?

7 A This was off an evaluation map section  
8 that we have on file on a division level.

9 Q Could you please explain to the Commission  
10 and the other parties what an evaluation map is?

11 A It is a railroad map that actually was  
12 first drawn in 1918, and then last corrected in the  
13 mid '60s. But it shows the track layout as it  
14 existed. And like you say, this was corrected up  
15 through the '60s, so it is still showing double track,  
16 but it's a layout of the railroad.

17 MR. GALLAGHER: I object. How do you know  
18 that this is double track in 1960?

19 THE WITNESS: We do have -- I couldn't  
20 print the entire map but I do have -- this map goes  
21 actually for a complete mile. On the bottom of the  
22 map is a stamp that I can present.

23 BY MR. DUNLAP:

24 Q As far as being current, does that mean as  
25 far as railroad properties and railroad facilities?

1           A           Yes. From the property standpoint, it  
2 would lay out the property lines. As far as the  
3 buildings, it is not going to be as accurate as it  
4 would be today. As I said earlier, that one siding is  
5 not there anymore. The building that shows up is the  
6 bottle company which is approximately where Eat 'n  
7 Park is in the area. Now some of that is going to  
8 vary based on time.

9           Q           So did the railroad make an effort to keep  
10 up on the facilities or buildings of third parties?

11          A           No. Let me explain. There used to be  
12 draftsmen personnel that worked for us that used to  
13 correct maps at different times, but as time went  
14 along, positions were eliminated and that part of it  
15 may not depict everything per se building wise.

16          Q           Again that was primarily for railroad  
17 facilities and railroad land?

18          A           Well, it is, but in essence here, where it  
19 shows double track, it was not. This map was not  
20 corrected to show that that was double track. It is  
21 single track now. From a boundary standpoint, it  
22 should be somewhat correct.

23                   (Whereupon, Norfolk Southern Exhibit No. 3 was marked  
24 for identification.)

25                   MR. DUNLAP: I'd like to show you what has

1       been marked for identification as Norfolk Southern  
2       Exhibit No. 3.

3                   JUDGE CORBETT: It is so marked and  
4       identified.

5           Q       Do you recognize these photographs, Mr.  
6       Rockney?

7           A       Yes, I do.

8           Q       Do you know when these were taken,  
9       approximately?

10          A       This would have been this past summer.

11          Q       Do these fairly and accurately -- what do  
12       they show in general?

13          A       Well, it shows the area.

14          Q       Do they fairly and accurately depict the  
15       areas on the photographs at that time?

16          A       Yes, they do.

17          Q       Looking at the first photograph -- maybe  
18       we should mark them A, B, C, and D. The first photo,  
19       let's mark it A. What does that depict?

20          A       We are standing at Guys Run Road with our  
21       back to Guys Run Road facing, looking at the north  
22       rail of the Conemaugh line, again to the left would be  
23       east railroad lines which is north of Route 28 lines,  
24       and we are looking right at the tavern towards the set  
25       of steps that leads up to the pedestrian crossing.

- 1 Q Looking at the next photo, let's call  
2 that B.
- 3 A You are looking at the close-up of the  
4 steps.
- 5 Q Is this the area that you described on the  
6 cross section plan as rising 6 feet within a 7 feet  
7 area?
- 8 A Yes, correct.
- 9 Q In your opinion, Mr. Rockney, could a  
10 bicycle ride up this slope?
- 11 A No. In my opinion, you could not ride a  
12 bicycle up that slope.
- 13 Q Let's look at the next photo. Let's mark  
14 that C. What does that predict?
- 15 A Again, you are at the Guys Run Road  
16 intersection and your back would be facing towards  
17 Pittsburgh looking north on Freeport Road and looking  
18 eastward, railroad direction, towards the turnpike.
- 19 Q How does this photo C relate to photo A?
- 20 A Well, you are at the same intersection  
21 only you are looking north instead of east.
- 22 Q Let's look at the next photo, D?
- 23 A This is a just a close-up again of the set  
24 of steps looking towards the tavern.
- 25 Q Has the railroad in your time with, during

1 your time with Norfolk Southern, going back in the  
2 Conrail and Penn Central, ever maintained these  
3 stairs?

4 A I cannot re maintaining those stairs.

5 Q Let's look at next photo. Let's mark it  
6 E. What does that depict?

7 A Here we are at the roadbed. We are  
8 adjacent to the Conemaugh line, again looking towards  
9 the tavern, and you can see the pathway leading from  
10 the track towards the tavern.

11 Q And there is no crossing surface there;  
12 correct?

13 A No, is there not.

14 Q Do you know when the crossing surface was  
15 taken out?

16 A I don't have any recollection of that.

17 Q Do you have any recollection whether that  
18 -- did you hear the testimony this morning of Mr.  
19 Seibert, I believe it was --

20 A Yes, I did.

21 Q -- in regards to the crossing surface?  
22 Do you have any recollection or any knowledge of  
23 Norfolk Southern doing anything at all with this  
24 crossing?

25 A I personally do not.

1 Q Let's look at the next photo. We will  
2 mark that as F. What does that depict?

3 A We are at the Wenzel Road side of the  
4 pedestrian crossing and I think that is the corner of  
5 the tavern that was depicted in the earlier -- on the  
6 right-hand side, the white -- but you would be facing  
7 again with your back to Pittsburgh looking north  
8 towards Wenzel Road, and that is Wenzel Road.

9 Q And then we will look at the next photo?

10 A This is the same location of the previous  
11 photograph, only a little bit closer to the railroad,  
12 and you are looking towards the new Route 28  
13 Interstate towards the Conemaugh tracks.

14 Q I had asked you previously about during  
15 your tenure with Norfolk Southern and Conrail, and  
16 Penn Central, about whether or not you knew when the  
17 crossing was taken out. Were you aware of the  
18 crossing that was being maintained by any of those  
19 institutions?

20 A I was not aware personally.

21 Q Sir, are you aware of any of the at grade  
22 pedestrian crossings in the Pittsburgh Division of  
23 Norfolk Southern?

24 A I am not aware of any at grade pedestrian  
25 crossings on the Pittsburgh Division.

1 Q What area does the Pittsburgh Division  
2 cover?

3 A We cover southern New York, Western  
4 Pennsylvania from Harrisburg to the Pennsylvania state  
5 line, Ohio, the eastern portion of Ohio, and also the  
6 northern portion of West Virginia.

7 Q So within all of that area, there is no at  
8 grade pedestrian crossings?

9 A There are no at grade pedestrian crossings  
10 that I am aware of.

11 Q Are you aware of any contract or agreement  
12 with the township or any individual with regard to  
13 this subject crossing?

14 A I am not aware of any agreement other than  
15 what I read in the Order.

16 Q So whatever is stated in the Order is the  
17 only thing that you are aware of?

18 A Yes.

19 Q The next question that is posed by the  
20 Commission, is the crossing necessary at this  
21 location?

22 A I don't feel that a crossing is necessary  
23 at this location.

24 Q Why is that, sir?

25 A I think the safety issue is the biggest

1 concern because of the speed of the track, the  
2 curvature of the rail, which is a three degree curve,  
3 and also the sight distance involved at this  
4 location. And that is my major worry, is the safety  
5 issue.

6 Q And I asked the question of the township  
7 engineer regarding weather conditions can affect sight  
8 distances?

9 A Definitely. As one picture depicted the  
10 fog, and the snow, and the rain greatly reduce the  
11 sight distances at any location, specially here.

12 Q In addition to people crossing the tracks  
13 themselves and potentially getting in accidents, do  
14 you have any concern about people standing by the  
15 tracks?

16 A Yes, we do. The actual -- when you see a  
17 train, there were many times that there is debris that  
18 could be hanging from the side of a train. And when  
19 we are out looking along the tracks, that is one of  
20 our major concerns from a safety standpoint is being  
21 aware of the potential of something shifted on a load,  
22 so the clearance points are always a concern from a  
23 center line of track distance ten feet out. As an  
24 example, as a minimum clearance, we allow contractors  
25 to work along the property, so we have to keep it a

1 five foot center line, or excuse me, a 10 foot center  
2 line distance for clearance purposes, so it is like a  
3 20 foot zone coming down through there that we are  
4 looking at from a safety standpoint.

5 Q How would the existence of an at grade  
6 pedestrian crossing affect people standing near the  
7 tracks as opposed to other locations on the line where  
8 there is a crossing?

9 A If you are looking at a pedestrian  
10 crossing, now you are talking about pedestrians being  
11 present at that location and it is a safety issue,  
12 that if they get too close to the center line of the  
13 track, they are going to subject themselves to a  
14 safety hazard.

15 Q The next question is what portion, if any,  
16 of any construction work deemed necessary to the  
17 crossing would Norfolk Southern agree to perform and  
18 what portion of the cost of the same and further  
19 maintenance would it agree to bear?

20 A See, being we don't agree that this  
21 crossing is necessary, I would say at this point we  
22 would not bear any cost.

23 Q Who should do the work and bear the cost  
24 if any work is ordered in regard to this requisition?

25 A I would say the township should bear the

1 cost. It is to their benefit.

2 Q If the township's complaint is sustained  
3 and the crossing is permitted, is re-established, is  
4 Norfolk Southern seeking any other kind of protection  
5 from liability from the township?

6 A I would say yes.

7 Q Why is that?

8 A Well, the liability issue of potential  
9 that could potentially be the pedestrian's standpoint  
10 of crossing over that location.

11 Q Would such a crossing have any benefit  
12 whatsoever to the railroad?

13 A No, it would not.

14 MR. DUNLAP: That is all I have, Your  
15 Honor.

16 JUDGE CORBETT: Mr. Salapa?

17 CROSS EXAMINAION

18 BY MR. SALAPA:

19 Q You had testified earlier that you were  
20 unaware of either Norfolk Southern, or Conrail, or  
21 Penn Central making any repairs at this crossing; is  
22 that correct?

23 A That is correct.

24 Q Were you aware of the existence of the  
25 crossing at all?

1           A           I knew of the existence from a personal  
2 standpoint only within the last few years based on  
3 complaints.

4           Q           So prior to that, you personally had no  
5 knowledge that the crossing even existed at this  
6 location?

7           A           That is correct.

8           Q           Would that be something that you would  
9 normally be familiar with in your position?

10          A           Well, I am not aware of every crossing  
11 that exists, let's put it that way.

12          Q           Similarly, you wouldn't be aware of every  
13 repair or item of maintenance that was done at every  
14 crossing in your division?

15          A           That is correct.

16                   MR. SALAPA: That is all I have, Your  
17 Honor.

18                   JUDGE CORBETT: Mr. Sharp?

19                   CROSS EXAMINATION

20           BY MR. SHARP:

21          Q           Is Norfolk Southern requesting that  
22 PennDOT, Pennsylvania Department of Transportation,  
23 bear any of the cost or responsibilities for this  
24 crossing?

25          A           I would say no.

1 MR. SHARP: Thank you, Your Honor, that is  
2 all I have.

3 JUDGE CORBETT: Mr. Gallagher?

4 CROSS EXAMINATION

5 BY MR. GALLAGHER:

6 Q Taking a look at these pictures right  
7 here, I guess it would be 3 B, and pictures of the  
8 stairs, you testified that it would be difficult for  
9 or very unlikely to be able to ride a bicycle up  
10 there?

11 A Yes.

12 Q Would it be impossible to carry a bicycle  
13 up these stairs?

14 A I suppose you could carry a bicycle up  
15 these stairs. I don't know if I would want to carry a  
16 bicycle up those stairs.

17 Q And on picture G, would it be possible to  
18 ride a bicycle down this portion of the crossing or at  
19 least up to the tracks?

20 A I would say up to the tracks.

21 Q You are talking about the owner of the  
22 lines as Pennsylvania Rail Lines?

23 A Yes.

24 Q And did Norfolk Southern recently file a  
25 joint petition with the Surface Transportation Board

1 to establish direct ownership and control by Norfolk  
2 Southern Railways of Pennsylvania Lines?

3 A I honestly wouldn't have that information  
4 to say yes or no.

5 Q Are you familiar with this company's  
6 corporate web site?

7 A Yes.

8 MR. GALLAGHER: I am sorry, I don't have  
9 copies for everyone.

10 MR. DUNLAP: I'd like an offer of proof  
11 where Mr. Gallagher is going with this and what his  
12 testimony is.

13 MR. GALLAGHER: According to the  
14 Pleadings, I thought one of the arguments would be  
15 Norfolk Southern does not have any responsibility  
16 because it is not the property of Norfolk Southern,  
17 that it is the property of Pennsylvania Rail Lines,  
18 and if the petition that was justified would change  
19 any operating agreement that Norfolk Southern  
20 currently has, there would be no effect.

21 MR. DUNLAP: I don't recall what you are  
22 referring to. I don't recall making any argument. If  
23 I may speak as counsel, generally Norfolk Southern  
24 Company has operating rights. They are in effect the  
25 owner as far as useage.

1                   MR. GALLAGHER: With that, I will  
2 withdraw.

3 BY MR. GALLAGHER:

4           Q        Are you familiar with the Wenzel crossing  
5 on Freeport Road?

6           A        Am I aware where it is at, yes.

7           Q        Would this be a pedestrian crossing?

8           A        No. I would not say it is a pedestrian  
9 crossing. It is a vehicular crossing.

10          Q        And there was testimony earlier there was  
11 around 35 or 50 residents who live in this section of  
12 Wenzel Drive. If this pedestrian crossing at Guys Run  
13 Road didn't exist, how would they be able to access  
14 the bus stop across the street on Freeport Road?

15          A        I would say by vehicle.

16          Q        Is there a Park & Ride? I think one of  
17 your counsel asked this of one of the witnesses. Is  
18 there a Park & Ride located around the bus stop?  
19 Sorry, I am asking two questions at once. If a  
20 resident on Wenzel Drive didn't have a vehicle, how  
21 would they be able to get to that bus stop?

22          A        I really think that would be something  
23 that, they would either have to carpool to get to that  
24 location presently, that would be the only other  
25 option.

1           Q           If someone owned a vehicle to drive to the  
2 bus stop, where would they park?

3           A           I am not sure of that.

4           Q           As far as the Park & Ride, you said if  
5 there was one there, that would be an issue. You said  
6 you weren't aware of any maintenance at the railroad  
7 crossing or the existence of the railroad ties that  
8 were across the rails that Mr. Seibert testified to  
9 earlier?

10          A           I said I knew of it a few years back once  
11 there was a complaint made.

12          Q           Because you weren't aware that maintenance  
13 had been undertaken by Norfolk Southern Railway or any  
14 of its predecessors, that doesn't mean one of the  
15 companies had taken responsibility over that?

16          A           Well, I mean that is a question there are  
17 things out here that are done along the railroad that  
18 could have been done without an agreement. I don't  
19 know if that is what you are asking.

20          Q           You were talking about an agreement that  
21 was in the Order. What agreement is that?

22          A           Well, I just was referring to the 1930  
23 Order.

24          Q           But you referenced an agreement that was  
25 referenced in the Order?

1           A           No, I meant, that is what I meant was the  
2           1930 Order.

3                   MR. GALLAGHER: Those are all of the  
4           questions I have.

5                   JUDGE CORBETT: Mr. Rodney, in preparing  
6           for today's hearing, did you review any records of any  
7           of the predecessor railroads in this area to determine  
8           how long or how long a period of time this rail line  
9           has been in existence?

10                   THE WITNESS: You mean the Conemaugh line  
11           itself?

12                   JUDGE CORBETT: Yes.

13                   THE WITNESS: The real estate map shows it  
14           was a 1918 dated map. As far as the railroad itself,  
15           I mean we have bridges that were built. I could look  
16           that up. I am responsible for the bridge maintenance  
17           and construction, so each of our bridges has a date on  
18           it that it was constructed.

19                   JUDGE CORBETT: In reviewing your records,  
20           did you review records prior to testifying today?

21                   THE WITNESS: I reviewed the records of  
22           what was supplied to me by counsel.

23                   JUDGE CORBETT: Did any of those records  
24           refer to any work orders or work performed in  
25           conjunction with the 1930 Order of the Commission?

1 THE WITNESS: It had different directives,  
2 yes.

3 JUDGE CORBETT: I am referring to the work  
4 orders themselves as to what was performed at this  
5 crossing by the railroad?

6 THE WITNESS: Back in 1930, are you  
7 referring to?

8 JUDGE CORBETT: Yes.

9 THE WITNESS: I did review that, yes.

10 JUDGE CORBETT: Are you able to tell us  
11 what work the railroad did pursuant to the railroad  
12 order that changed the crossing from what it was at  
13 that time to what it subsequently became?

14 THE WITNESS: Other than the fact of what  
15 was stated in the Order that had said, if I remember,  
16 it was changed from a vehicular crossing to a  
17 pedestrian crossing.

18 JUDGE CORBETT: Did it say what work was  
19 changed to make an alteration?

20 THE WITNESS: I would have to re-read it  
21 again. I remember reading in there stating the  
22 Pennsylvania Railroad was ordered to do certain items  
23 in there to construct the crossing.

24 JUDGE CORBETT: All right. In looking at  
25 what has been marked as Exhibit 3 B, I think this is

1 the picture of the steps leading up to the railroad  
2 tracks?

3 THE WITNESS: Yes.

4 JUDGE CORBETT: Would I be correct in  
5 assuming that a lot of gravel that I see in the  
6 picture would be ballast?

7 THE WITNESS: It looks to be the size of  
8 ballast.

9 JUDGE CORBETT: You said that the  
10 elevation from the surrounding roadway to the tracks  
11 is now approximately six feet?

12 THE WITNESS: Yes.

13 JUDGE CORBETT: From time to time does the  
14 railroad add ballast to the tracks as a track  
15 improvement process over time?

16 THE WITNESS: Yes, they do.

17 JUDGE CORBETT: During the '73, '74 years  
18 since the Commission has entered an Order, the last  
19 order that we know of concerning this crossing, would  
20 you expect that this crossing would be built up over  
21 this time with ballast eroding?

22 THE WITNESS: Yes, I would say that would  
23 be a correct summation.

24 JUDGE CORBETT: Do you know if the six  
25 feet elevation would be due to ballast added by the

1 railroad since 1930?

2 THE WITNESS: It would be hard to come up  
3 with, but during ballast raise, it would be three  
4 inches at a time, possibly three to four inches at a  
5 time. Depending on the how many raises the surfacing  
6 was performed, it does add up.

7 JUDGE CORBETT: How many times would you  
8 say that there had been ballast added to this area  
9 over the last 73 years?

10 THE WITNESS: That is kind of a hard  
11 question because there is two ways that you could  
12 surface ballast. You could either undercut it or  
13 raise into it, and without knowing that, I do know  
14 there are two bridges on each end of this that kind of  
15 limit that raise. I don't think I show them here, but  
16 normally that is kind of a fixed point that limits  
17 your raises, and it is also the crossings that  
18 normally limit your raisings, so if you have crossings  
19 built in, it becomes a lot more of an issue to, you  
20 have to tear the crossings apart in order to get  
21 raises and rebuild the crossing, so any time that you  
22 come within a crossing area, that kind of limits your  
23 raise into a track and out of track.

24 JUDGE CORBETT: Would I be correct in my  
25 understanding that any work performed by the railroad

1 pursuant to the 1930 Order of the Commission -- strike  
2 that. That is all of the questions I have. Have you  
3 any redirect, Mr. Gallagher? I am sorry, Mr. Dunlap?

4 MR. DUNLAP: Yes, just one.

5 REDIRECT EXAMINATION

6 BY MR. DUNLAP:

7 Q In follow up to Mr. Gallagher's questions  
8 regarding useage of the crossing and how others can  
9 get around and so forth, what is Norfolk Southern's  
10 primary concern in prohibiting pedestrian useage of  
11 this crossing?

12 A Well, it would be the safety issue at  
13 grade and the liability issue of the pedestrian being  
14 hit by a train, that it would not clear the passage of  
15 a train.

16 MR. DUNLAP: Nothing further, but I would  
17 like to move Norfolk Southern No. 1 through 3 into  
18 evidence.

19 JUDGE CORBETT: Any objection?

20 MR. SALAPA: No.

21 JUDGE CORBETT: They would be so admitted.  
22 (Whereupon, Norfolk Southern Exhibits 1 through 3 were  
23 admitted into evidence.)

24 JUDGE CORBETT: Any recross from anyone?

25 MR. GALLAGHER: One question.



1 protection, it is a warning device. In other words,  
2 there is cross bucks mounted on a pole that indicate  
3 that there is a crossing at that location. So, at  
4 least if somebody coming up to the crossing is aware  
5 that there is a crossing there, it is protection, but  
6 it is less protection than if you have flashing lights  
7 or gates.

8 Q This crossing, that exists at Wenzel Drive  
9 as well?

10 A Wenzel Drive has the flashing lights and  
11 gates.

12 Q Have any pedestrian accidents happened at  
13 either of those three crossings: Wenzel Drive, Guys  
14 Run, or the Joint Sewer Authority, as far as you are  
15 aware of?

16 A I am not aware of any, so I wouldn't be  
17 able to say yes or no.

18 Q Are you aware of any pedestrian crossings,  
19 whatsoever, or accidents?

20 A No, sir.

21 Q That is all I have, Your Honor.

22 JUDGE CORBETT: Thank you. You are  
23 excused. Mr. Salapa.

24 DAVID FISCHER

25 having been duly sworn, testified under oath as

1 follows:

2 DIRECT EXAMINATION

3 JUDGE CORBETT: Give us your full name and  
4 spell your last name for the court reporter.

5 THE WITNESS: David Fischer,  
6 F-i-s-c-h-e-r.

7 BY MR. SALAPA:

8 Q Mr. Fischer, can you please state by whom  
9 are you employed and in what capacity?

10 A I am employed by the Rail Safety Division  
11 of the Bureau of Transportation and Safety of the  
12 Public Utility Commission.

13 Q And how long have you been employed in  
14 that position, Mr. Fischer?

15 A Approximately 30 years.

16 Q And what are your duties in that position?

17 A I conduct field investigations at rail  
18 highway crossings throughout the state. I testify at  
19 proceedings like this. I prepare recommendations for  
20 the Commission's approval concerning rail highway  
21 crossings. And I monitor all cases that have been  
22 assigned to me for compliance with orders.

23 Q And are you a licensed professional  
24 engineer in the Commonwealth of Pennsylvania?

25 A Yes.

1 Q And are you authorized to testify today on  
2 behalf of the Bureau of Transportation and Safety?

3 A Yes.

4 Q And are you familiar with the crossing  
5 that is the subject of this proceeding?

6 A Yes.

7 Q And did you in fact conduct a field  
8 meeting at the site of this crossing?

9 A Yes, I did.

10 Q When would that have been?

11 A I think it was August 21 of 2003.

12 Q And are you aware of the previous order of  
13 the Commission entered, I believe, in 1930?

14 A Yes, I am.

15 Q And are you aware of the particular  
16 provision of that order?

17 A Yes.

18 Q What is the Bureau of Transportation and  
19 Safety's position regarding that prior order of the  
20 Commission?

21 A It is an Order of the Public Utility  
22 Commission's predecessor and as such Order it should  
23 be enforced.

24 Q And what is the basis of the Bureau of  
25 Transportation and Safety's position on that?

1           A           There had been other similar proceedings  
2 which such maintenance had been assigned to pedestrian  
3 crossings.

4                       MR. SALAPA: If I could, Your Honor, I  
5 have passed out to counsel -- I believe everyone has a  
6 copy -- of what had been previously marked as Staff  
7 Exhibit No. 1.

8 (Whereupon, PUC Staff Exhibit No. 1 was marked for  
9 identification.)

10           And Mr. Fischer, could you refer to what has been  
11 marked as Staff Exhibit No. 1. Can you identify that?

12           A           Yes. It is an Order by the Public Utility  
13 Commission, the date of which is entered August 10,  
14 1993 at Docket C-00913746.

15           Q           And were you involved in that proceeding  
16 at all?

17           A           Yes, I was.

18           Q           And could you refer to paragraph number 5  
19 of the Order at the end of page 29 and does that in  
20 fact direct the railroad to make repairs to a  
21 pedestrian tunnel?

22           A           Yes, it does.

23                       MR. SALAPA: Thank you. That is all I  
24 have, Your Honor. I would move for the admission of  
25 Staff Exhibit No. 1.

1 JUDGE CORBETT: Any objection? It will  
2 be so admitted.

3 (Whereupon, PUC Staff Exhibit No. 1 was admitted into  
4 evidence.)

5 Why don't we start with Mr. Gallagher?

6 MR. GALLAGHER: I have no questions, Your  
7 Honor.

8 JUDGE CORBETT: Mr. Dunlap?

9 MR. DUNLAP: Yes.

10 CROSS EXAMINATION

11 BY MR. DUNLAP:

12 Q Mr. Fischer, this proceeding concerned a  
13 tunnel, not an at-grade crossing?

14 A Right, it was not an at-grade crossing.

15 Q Do you know the dimensions of this tunnel,  
16 what its features were?

17 A Not offhand. I mean I don't know the  
18 exact measurements off hand, no.

19 MR. SALAPA: Point of clarification, Your  
20 Honor. Is counsel asking for a general description or  
21 is he asking for specific dimensions?

22 MR. DUNLAP: I am sorry, general  
23 description would be fine.

24 JUDGE CORBETT: Would you give an answer  
25 to that question, Mr. Fischer?



1 BY MR. SHARP:

2 Q Mr. Fischer, in the Bureau of  
3 Transportation and Safety position that the 1930  
4 Order enforced, are you -- you are not suggesting  
5 that the Department of Transportation allocated any  
6 responsibility for this pedestrian crossing; are you?

7 A If they weren't in that Order, no.

8 Q You just want to go by that Order and that  
9 Order is being enforced?

10 A Yes.

11 MR. SHARP: Thank you; that is all.

12 JUDGE CORBETT: Any redirect, Mr. Salapa?

13 MR. SALAPA: No, Your Honor.

14 JUDGE CORBETT: Thank you very much. You  
15 are excused.

16 Is there any other party that I have not  
17 called who desires to submit any additional testimony  
18 in this matter?

19 Then we will go back to does any party  
20 wish to present any rebuttal testimony to anything  
21 that has been presented so far?

22 MR. SALAPA: I want to make sure I did  
23 already move for the admission of my exhibit.

24 JUDGE CORBETT: Yes, you did, according to  
25 my notes, you did. It is admitted. Any response to

1 the solicitation for rebuttal testimony?

2 MR. DUNLAP: None for Norfolk Southern,  
3 Your Honor.

4 JUDGE CORBETT: Then I will wait to  
5 receive a copy of the transcript from today's  
6 proceeding. That transcript should arrive in this  
7 office probably within the next 3 or 4 weeks. I will  
8 then send out to the parties a brief letter which will  
9 give the parties dates as to when their main briefs  
10 are due. Those briefs will be due 30 days from the  
11 date of the letter. All parties can file  
12 contemporaneous briefs by the same day. Reply briefs  
13 will be due 15 days after that. Those dates will be  
14 set forth in the letter following receipt of the reply  
15 briefs. I will sit down and draft a recommended  
16 decision in this case. That recommended decision will  
17 be filed with the Commission within 90 days after  
18 reply briefs. If any party wishes to file an  
19 exception to my decision, there will be an  
20 instructional letter that accompanies the recommended  
21 decision which outlines for the parties the procedure  
22 to follow if they wish to file exceptions. Please  
23 note the exemption must be filed with the Commission  
24 in Harrisburg by the date specified in the  
25 instructional letter. So, as far as the briefs are

1 concerned, please follow the regulations of the  
2 Commission as far as filing briefs. If you wish, you  
3 can attach findings of fact and conclusions of law,  
4 although I am not interested in it because usually the  
5 findings of fact and conclusions of law are so slight  
6 they are not that useful to me. You will try to, I  
7 hope, come up with more objective findings of facts  
8 and conclusions of law. But I am certainly interested  
9 in the legal arguments that you wish to present to me  
10 on the issues, particularly the jurisdictional issues  
11 involved in this case, and I will be revisiting that  
12 issue in my decision.

13 If you wish to send me your briefs by e-mail, you  
14 may do so. I will give my e-mail address if you want  
15 to do that. My e-mail address is  
16 johcorbett@state.PA.US. I will want one copy, one  
17 hard copy of your briefs, one copy by e-mail. If you  
18 can't supply the copies to me by e-mail, then I need  
19 two hard copies. One hard copy and one copy by e-mail  
20 to be received by e-mail and served on other parties  
21 on the date specified. That is an in-hand date. Any  
22 questions with regard to the briefs or any other  
23 procedural matter that the parties would like to  
24 bring to my attention?

25 MR. DUNLAP: On the in-hand date, is it

1       okay to serve the other parties by e-mail too?

2                       JUDGE CORBETT:  However they want to  
3       prefer.  If it is acceptable to everyone else, they  
4       can do that.  Everybody seems to agree, service by  
5       e-mail followed by hard copy, next day would be fine.

6                       Formal briefs, since you are sending it by  
7       e-mail, would be in Word 2000, I believe.  Any way,  
8       you probably have a more recent version of Word.  If  
9       you do, please save it as a Word 2000 document and  
10      send it to me.  You may have a question about that.  
11     Ask your secretary.  She certainly knows more about it  
12     than I do.  Other wise, I can't read it.  Any  
13     questions about formatting or anything else?  All  
14     right.

15                      I thank the parties for their participation and  
16     cooperation and you many receive my decision in due  
17     course.  Thank you very much.

18     (Whereupon, at 1:35 p.m., the hearing was concluded.)

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C E R T I F I C A T E

I hereby certify, as the Notary Reporter,  
that the foregoing proceedings were taken  
stenographically by me, and thereafter reduced to  
typewriting by me or under my direction, and that this  
transcript is a true and accurate record to the best  
of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

BY: Anne V. Thompson

(JL)

Anne V. Thompson



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

August 10, 1993

IN REPLY PLEASE  
REFER TO OUR FILE

C-00913746

THOMAS P COLE II SOLICITOR  
NORTH HUNTINGDON TOWNSHIP  
15 EAST OTTERMAN STREET  
GREENSBURG PA 15601

**DOCUMENT  
FOLDER**

North Huntingdon Township  
v.  
Consolidated Rail Corporation  
Pennsylvania Department of Transportation and Westmoreland County

**DOCKETED**  
MAR 08 2004

Dear Sir:

This is to advise you that the Commission at Public Meeting held March 25, 1993 adopted an Opinion and Order in connection with the above entitled proceeding.

A copy of the Opinion and Order is enclosed for your records.

Very truly yours,

John G. Alford, Secretary

JZ  
Encls.  
Certified Mail  
Receipt Requested

Copy of Opinion and Order to: See Letter of Recommended Decision dated 1/22/93 for parties of record.

**DOCUMENTS  
FOLDER**

**DOCKETED**  
SEP 01 1993

REG STAFF EXHIBIT #1

Q-20030536  
1/29/04 Dgh/a.j

SLV

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

DOC. # 1111  
FOLDER

Public Meeting held March 25, 1993

Commissioners Present:

David W. Rolka, Chairman  
Joseph Rhodes, Jr., Vice Chairman  
Wendell F. Holland, Commissioner

North Huntingdon Township

C-00913746

v.  
Consolidated Rail Corporation,  
Pennsylvania Department of Transportation  
and Westmoreland County

DOCKETED

OPINION AND ORDER

SEP 01 1993

BY THE COMMISSION:

Before the Commission for consideration is the Recommended Decision ("R.D.") issued relative to the above-captioned Proceeding, and the Exceptions and Reply Exceptions filed in response thereto. The documents filed, and the dates they were filed, were as follows:

<u>Document</u>	<u>Party Issuing/ Filing</u>	<u>Date Issued/ Filed</u>
Recommended Decision ("R.D.")	Administrative Law Judge ("ALJ") Larry Gesoff	January 22, 1993
Exceptions	Law Bureau ("Law Bureau")	February 10, 1993
Exceptions	Consolidated Rail Corporation ("Conrail")	February 10, 1993
Reply to Exceptions of Conrail	Township of North Huntingdon ("Township")	February 19, 1993
Reply to Exceptions of Law Bureau	Township	February 19, 1993

## History of Proceedings

1. By Complaint filed December 5, 1991, North Huntingdon Township ("Township") alleges that in 1936 the Commission directed that an at-grade crossing in the Village of Larimer be eliminated and replaced by a vehicular subway and pedestrian subway under the tracks of the Pennsylvania Railroad Company. As a result, the wooden bridge leading from the at-grade crossing over Brush Creek towards Brownstown Road was replaced by a narrower footbridge. The Township further alleges that in May 1991, Consolidated Rail Corporation ("Conrail") closed the footbridge which not only crosses Brush Creek, but also leads to the pedestrian subway under the tracks of Conrail in the Township.

2. The Township also alleges that the Public Service Commission Order assigned maintenance responsibility for the pedestrian subway, but not the footbridge. The Township alleges that the Pennsylvania Railroad Company, Conrail's predecessor, installed and maintained the footbridge and that Conrail has maintained the subway and footbridge. According to the Township, the footbridge is essential to the citizens of Larimer who use it to travel from one side of the village to another because the village was cut in half when the rail line was constructed. The Township alleges that the following use the subway and footbridge: fire fighters, school children traveling to their bus stops and residents visiting the post office, church, etc. Since the footbridge was closed, residents have had to walk along Route 993, which is heavily traveled and not designed for pedestrians. The Township requests the Commission to assign maintenance responsibility for the footbridge to Conrail.

3. Westmoreland County filed an Answer to the Complaint. The Commission held a field investigation and conference at the site of the footbridge on February 5, 1992.

4. The Commission held a hearing on August 18, 1992. The following parties were represented by counsel and participated in the hearing: the Township, Conrail, Pennsylvania Department of Transportation ("PennDOT"), Westmoreland County (the "County"), the Commission's Law Bureau (the "Law Bureau") and the Peoples Natural Gas Company ("Peoples"). The Township presented 14 witnesses and produced 19 exhibits which were admitted into evidence. Conrail, PennDOT, the Law Bureau and Peoples presented one witness each. Peoples produced one exhibit which was admitted into evidence. No one testified on behalf of the County. One witness testified on behalf of The Municipal Authority of Westmoreland County ("MAWC"), which was not represented by counsel. The record in this proceeding consists of the above-referenced exhibits and a 109 page transcription of the notes of testimony.

5. The Township, Conrail, PennDOT and the Law Bureau filed Main Briefs. The Township filed two Reply Briefs, one in response to the Law Bureau's Main Brief and one in response to Conrail's Main Brief.

6. The ALJ issued his R.D. herein on January 22, 1993. Exceptions and Reply Exceptions were filed as noted above.

#### Discussion

Based on his review, evaluation and analysis of the record, ALJ Gesoff made the following Findings of Fact:

1. The present pedestrian bridge was constructed in about 1888 as a vehicular bridge over Brush Creek. Tr. 43.
2. On April 14, 1936, at Complaint Docket No. 7238, the Public Service Commission abolished the crossing where Irwin-Trafford Road crossed four main tracks of the Penn-

sylvania Railroad in the Village of Larimer. The at-grade crossing was replaced with a grade separated crossing at a new location. The Commission directed that the Department of Highways (now PennDOT) construct a pedestrian subway at the location of the at-grade crossing. So there would be a continuous walkway from one side of the tracks and across Brush Creek into the other side of the Village of Larimer, the vehicular bridge over Brush Creek was converted to a pedestrian bridge by removal of one of the three trusses. Since then, the Pennsylvania Railroad Company and Conrail made minor modifications to the handrails of the pedestrian bridge and replaced some deck timbers. Tr. 43, 54, 58; Exs. A, C.

3. The Public Service Commission Order of April 14, 1936 assigned to the Pennsylvania Railroad Company maintenance responsibility for the pedestrian subway, including the concrete stairways, the lighting facilities therein and the walk leading to the subway. Ex. C.

4. The bridge in question is a pedestrian bridge over Brush Creek in North Huntington Township. It is a single span, wood deck bridge about 75 feet long. The bridge has a steel railing and a steel substructure. The pedestrian bridge is structurally unsound and not safe for pedestrian traffic. The hand-rail needs to be repaired. Several cross members of the wood deck are missing because they are decayed or rotten and cannot be safely attached to the steel decking. The abutments are adequate. Active gas and water lines are attached to the pedestrian bridge. Tr. 24, 34, 38, 42; Ex. B at 5-7, 13.

5. The track near the bridge in question is Conrail's Pittsburgh Line. Conrail operates about 30 to 35 trains daily at this location. An average of four Amtrak trains daily operate over the same track. There are two main tracks. The maximum authorized speed for a passenger train is 70 miles per hour and for a freight train, 60 miles per hour. Conrail contemplates no changes at this location. Tr. 41-42.

6. The pedestrian bridge does not cross above or below a railroad track or right-of-way. Tr. 32, 43, 55; Ex. A.

7. Conrail closed the pedestrian bridge on April 23, 1991. Ex. L. The bridge is barricaded with steel members, resembling a rigid fence, welded in place with 2-inch wire mesh stretched over the members. The Township did not erect the barricades. Tr. 51, 80; Ex. B at 3, 5-7, 13.

8. The pedestrian underpass is in good condition structurally. Lights have been smashed and are not operable and some of the stairways steps are in disrepair. Tr. 76-77; Ex. B at 1, 4, 10-12.

9. Conrail repaired the pedestrian bridge to correct hazardous conditions. It has cleaned out drains and replaced light bulbs in the pedestrian underpass. Tr. 43-44, 48.

10. Neither the Township nor its contractor has performed maintenance on the pedestrian bridge. The Pennsylvania Railroad constructed and maintained it and Conrail has maintained it. Tr. 24-25, 44-45, 80, 88-89.

11. While Donald Glenn, the current Township engineer, was employed by the Pennsylvania Railroad Company, the railroad performed physical work on the pedestrian bridge. Tr. 30-31.

12. PennDOT has no maintenance obligations regarding the structures being used as a pedestrian crossing under the railroad and over Brush Creek. Tr. 58.

13. To travel from the south side to the north side of Larimer using the pedestrian tunnel, a pedestrian uses the pedestrian footbridge to cross Brush Creek, makes a 90-degree left turn, traverses a bituminous paved walkway, makes a 90-degree right turn to go down the stairway to the pedestrian tunnel under the tracks, and exits the pedestrian tunnel near Railroad Street. Tr. 76; Ex. C.

14. The only alternative route from the south to the north side of Larimer is a detour of about 2,000 feet. This route takes pedestrians along State Route 993, where vehicular traffic travels at a high rate of speed. Route 993 is not adequate for pedestrians because there is no curb or paved sidewalk except for the sidewalk across the vehicular bridge over Brush Creek and the vehicular underpass under the railroad tracks. Tr. 31-32, 79; Ex. A.

15. Larimer does not have home delivery of mail, so residents must rent a post office box and come to the post office (on the southern side of Larimer) to get their mail. This affects about forty homes on the north side of Larimer. Elderly people living on Scotch Hill and Blair Lane (on the northern side of Larimer) walk to the post office daily to get their mail and walk to Church Sundays. Also, the playground is in the church yard. Without the pedestrian bridge, children catching a school bus, residents going to get their mail and residents going to church must cross the railroad tracks or walk along Route 993 to cross from the north to the south side of Larimer. Tr. 25, 95-97.

16. The 30-inch water line along the north side of the railroad tracks is used to fight fires on the south side of Larimer because the 6-inch line on Brownstown Road (on the south side of Larimer) does not supply sufficient pressure. The fire company lays hose from the 30-inch hydrant through the subway and over the pedestrian bridge to fight fires on Maple Lane, Armstrong Street, Shannon Street or Brownstown Road, all on the south side of the railroad tracks in Larimer. Tr. 25, 93-95; Ex. B at 6, 13.

17. A Peoples Natural Gas Company three-inch welded steel natural gas line providing service to the northern portion of Larimer is on and to the eastern side of the footbridge. It lays outside of the railing area on a one foot wide ledge. The line serves 20-30 customers and Peoples has no other gas supplies on the northern side of the railroad. If the pedestrian bridge is replaced, Peoples' pipe-

line would need dead weight support during construction. Tr. 64-65, 69; Peoples Ex. 1.

18. The Municipal Authority of Westmoreland County owns a six inch cast iron pipeline located on the deck of the pedestrian bridge. The pipeline is a one way feed to the north side of Larimer. MAWC would have the same dead weight concerns for its pipeline that Peoples has for its pipeline if the existing bridge is replaced. Tr. 72-73; Ex. B at 13.

(R.D. pp. 15-19).

In his Recommended Decision ALJ Gesoff specifically addressed the following topics: (1) Burden of Proof, (2) Jurisdiction, and (3) The Public Service Commission Order. Based on his analysis of the evidentiary record, the ALJ reached the following Conclusions of Law:

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.
2. The Commission has the authority to enforce the April 14, 1936 Order of the Public Service Commission at Complaint Docket No. 7238, 15 P.S.C. 48 (1936).
3. The Commission can interpret and construe the orders of the Public Service Commission, its predecessor.
4. Without maintenance of the pedestrian bridge, the April 14, 1936 Order of the Public Service Commission at Complaint Docket No. 7238, 15 P.S.C. 48, has no force and effect.
5. Conrail benefits from the pedestrian bridge and should maintain it at its sole cost and expense.

(R.D. pp. 32-33).

Based on his discussion and his Conclusions of Law, the ALJ recommended that we order as follows:

1. That the Complaint of North Huntingdon Township against Consolidated Rail Corporation, Pennsylvania Department of Transportation and Westmoreland County at Docket No. C-99013746 is sustained.
2. That Consolidated Rail Corporation, at its sole cost and expense, furnish all materials and do all work necessary to maintain the pedestrian bridge across Brush Creek in the Village of Larimer, North Huntingdon Township.
3. That Consolidated Rail Corporation at its sole cost and expense, furnish all materials and do all work necessary to repair the concrete steps of the pedestrian tunnel and the lights in the tunnel, and that the repairs be completed within six months from entry of the Commission's Order.
4. That Consolidated Rail Corporation, at its sole cost and expense, conduct an in depth inspection of the superstructure and the substructure of the pedestrian bridge.
5. That Consolidated Rail Corporation, at its sole cost and expense, within six months from entry of the Commission's Order, submit to the Commission and all interested parties the results of the inspection referred to in paragraph four of this Order, along with plans and cost estimates for the rehabilitation or replacement of the footbridge, depending on the results of the inspection.
6. That further hearing be held upon receipt of the results of the study and the plans and cost estimates referred to in paragraph five of this Order.

(R.D. pp. 33-34).

Exceptions of Law Bureau and  
Township's Reply to Exceptions

The Law Bureau basically takes seven (7) Exceptions to the ALJ's R.D. These Exceptions, in substantial part, are as follows:

1. The Law Bureau excepts to Conclusion of Law No. 4 in the Recommended Decision (R.D.) in that Conclusion of Law No. 4 states that the Commission order of April 14, 1936, at Docket No. C-7238, has no force and effect without maintenance of the pedestrian bridge over Brush Creek. The order of April 14, 1936 does remain in full force and effect and is enforceable even if the pedestrian footbridge is not maintained. Therefore, this Conclusion of Law is incorrect as stated.

The Law Bureau excepts to Conclusion of Law No. 4 to the extent that it leads to the conclusion that Consolidated Rail Corporation (Conrail) maintain the pedestrian bridge pursuant to the April 14, 1936 order at Docket No. C-7238. Even if it were true that the April 14, 1936 order has no force and effect unless the footbridge is maintained the Commission still has no authority to order Conrail to maintain the footbridge pursuant to the April 14, 1936 order. As set forth in its brief, the Law Bureau asserts that the Commission can only enforce the provisions contained in the April 14, 1936 order. There is no provision in the April 14, 1936 order which directs any party to maintain the pedestrian bridge. The fact that Conrail and the Pennsylvania Railroad did perform maintenance work on the bridge after 1936 does not lead to the conclusion that Conrail is responsible for maintenance of the pedestrian bridge pursuant to the April 14, 1936 order.

\* \* \* \*

In assigning Conrail the responsibility for maintaining the pedestrian bridge under the April 14, 1936 order, the ALJ sets forth a

line of reasoning as to why the pedestrian footbridge was not mentioned at all in the April 14, 1936 order. The ALJ states at Page 29 of the Recommended Decision that the order did not mention the footbridge because it did not exist when the order was issued. However, neither the pedestrian subway nor the new separated rail-highway crossing which were constructed pursuant to the April 14, 1936 order existed at the time that the April 14, 1936 order was issued. Yet, even though neither existed at the time the order was issued, the order specifically stated that a new crossing and a pedestrian subway were to be constructed and maintained. The fact that the pedestrian bridge did not exist at the time that the April 14, 1936 order was issued does not serve as a reasonable explanation as to why the April 14, 1936 order failed to direct a party to construct or maintain the pedestrian bridge.

\* \* \* \*

Any exploration of why the April 14, 1936 order does not mention a pedestrian bridge is pure speculation. The fact remains that Conrail is under no obligation pursuant to the April 14, 1936 order to maintain the existing pedestrian bridge over Brush Creek.

The Law Bureau requests that Conclusion of Law No. 4 be modified to state as follows:

The April 14, 1936 order of the Public Service Commission at Complaint Docket No. 7238, 15 P.S.C. 48 remains in full force and effect.

In response, the Township stated as follows:

1. The Conclusion of Law No. 4 in the Recommended Decision should be sustained. The Commission Order of April 14, 1936 at Docket No. C-7238 directed that relocation of or changes in adjacent structures be at the expense of the railroad, as set forth in the Township's Reply Brief to Conrail, at Page 2.

Additionally, the Township exhibits A, B, H, and O show that the pedestrian subway and pedestrian footbridge are immediately adjacent to one another, such that one does not serve a purpose independent of the other.

It is clear that the Commission's jurisdiction extends to approaches to crossings as set forth in the Township's Main Brief at Page 2, and the Recommended Order at Page 23.

Finally, the intention of the Commission Order of April 14, 1936 certainly was not to have a pedestrian subway cross under the railroad tracks only to drop thirty (30) feet into the stream below. The Commission Order of April 14, 1936 directed that the railroad bear the expenses of relocating or altering adjacent structures and the pedestrian bridge is an adjacent structure.

We agree with the position of the Law Bureau to the extent that we do not have jurisdiction over a crossing which is used by pedestrians only except for the limited purpose of enforcing a prior Order. However, we believe that the 1936 Order issued by the Public Service Commission considered the safety and convenience of the residents of Larimer. Therefore, we find that the 1936 Order remains in full force and effect insofar as the Order touches and affects the safety of the residents of Larimer.

2. The Law Bureau excepts to Conclusion of Law No. 5 because it finds that Conrail benefits from the pedestrian bridge and should maintain it. As the ALJ notes in his discussion at Pages 24-25, the Commission has no jurisdiction pursuant to 66 Pa. C.S. §§2702 and 2704 because the pedestrian bridge is not a "highway" as defined at 66 Pa. C.S. §102. Which parties benefit from the existence of a structure or crossing is one of the factors which the Commission may use in allocating costs in rail-highway crossing projects pursuant to 66 Pa. C.S. §2702 and 2704. Here, 66 Pa. C.S. §§2702 and 2704 are

not applicable; therefore, who benefits from the existence of the pedestrian bridge is irrelevant. The only issue in this case is whether the Commission can order Conrail to maintain the pedestrian bridge over Brush Creek pursuant to the April 14, 1936 order. As set forth in Exception No. 1, the Law Bureau contends that the Commission does not have that authority because the April 14, 1936 order does not direct any party to construct or maintain a pedestrian foot-bridge. Therefore, the Law Bureau requests that Conclusion of Law No. 5 be deleted in its entirety.

In response, the Township stated:

2. The Conclusion of Law No. 5 should be sustained. Conrail is benefited by the footbridge in that pedestrians are able to safely cross the railroad tracks when each are in safe and crossable condition.

We agree with the Law Bureau on this point, and we will delete Conclusion of Law No. 5 in its entirety. We do not have jurisdiction over a crossing which is used by pedestrians only except for the limited purpose of enforcing a prior Order. We reiterate that the 1936 Order remains in full force and effect insofar as the Order touches and affects the safety and convenience of the residents of Larimer.

3. The Law Bureau excepts to Ordering Paragraph No. 1 in that it sustains the complaint at the wrong docket number. The Law Bureau requests Ordering Paragraph No. 1 be modified to state that the complaint at Docket No. C-00913746 is sustained.

Therefore, we shall grant Exception No. 3 of the Law Bureau. The appropriate change will be made to our Opinion and Order herein.

4. The Law Bureau excepts to Ordering Paragraph No. 2 because it directs Conrail to maintain the pedestrian bridge across Brush Creek. The Law Bureau excepts to this Ordering Paragraph for the same reasons as set forth in Exceptions Nos. 1 and 2 above and incorporates the reasoning set forth in those Exceptions into this Exception. The Law Bureau reiterates that the Commission has no authority to order Conrail to maintain the pedestrian bridge over Brush Creek pursuant to the order of April 14, 1936. The Commission can only order Conrail to maintain the pedestrian subway pursuant to the April 14, 1936 order. The Law Bureau therefore requests that Ordering Paragraph No. 2 of the Recommended Decision be deleted in its entirety.

In response, the Township stated:

3. The ordering Paragraph No. 2 should be sustained for the reasons set forth in Paragraph 1, above. [Township is referring to Paragraph 1 of its Reply to Exceptions quoted above]

On review of this Exception, we agree with the Law Bureau that we do not have jurisdiction to order Conrail to maintain the pedestrian bridge over Brush Creek pursuant to the Order of April 14, 1936. We will, therefore, delete Ordering Paragraph No. 2 of the R.D. from our Opinion and Order herein.

5. The Law Bureau excepts to Ordering Paragraph No. 4 because it orders Conrail to conduct an indepth inspection of the superstructure and substructure of the pedestrian bridge. The Law Bureau excepts to this Ordering Paragraph for the same reasons as set forth in Exceptions Nos. 1, 2 and 4 above and incorporates the reasoning set forth in those Exceptions into this Exception. The order of April 14, 1936 does not direct any party to construct or maintain

a pedestrian bridge over Brush Creek. Therefore, the Commission cannot order Conrail to inspect the pedestrian bridge pursuant to the April 14, 1936 order. The Law Bureau requests that the Commission delete Ordering Paragraph No. 4 in its entirety.

In response, the Township stated:

4. The ordering Paragraph No. 4 should be sustained for the reasons set forth in Paragraph 1, above.

We again agree with this Exception of the Law Bureau, and its supporting rationale. Since our 1936 Order does not direct any party to construct or maintain a pedestrian bridge over Brush Creek, we cannot now order Conrail to inspect the bridge pursuant to the 1936 Order. We will therefore delete Ordering Paragraph No. 4 from the Opinion and Order herein.

6. The Law Bureau excepts to Ordering Paragraph No. 5 in that it orders Conrail to submit copies of its inspection report on the pedestrian bridge over Brush Creek to all parties of record. The Law Bureau excepts to this Ordering Paragraph for the same reasons as set forth in Exceptions Nos. 1, 2, 4 and 5 above and incorporates the reasoning set forth in those Exceptions into this Exception. The April 14, 1936 order does not direct any party to construct or maintain a pedestrian footbridge over Brush Creek. Therefore, the Commission cannot order Conrail to inspect the pedestrian bridge pursuant to the April 14, 1936 order. The Law Bureau requests the Commission to delete Ordering Paragraph No. 5 in its entirety.

In response, the Township stated:

5. The ordering Paragraph No. 5 should be sustained for the reasons set forth in Paragraph 1, above.

Again, we agree with this exception, and its supporting rationale, and we will delete Ordering Paragraph No. 5 in its entirety.

7. The Law Bureau excepts to Ordering Paragraph No. 6 because it directs that upon further receipt of the result of the in depth inspection study a further hearing could be held upon this matter. The Law Bureau excepts to this Ordering Paragraph for the same reasons as set forth in Exception Nos. 1, 2, 4, 5 and 6 and incorporates the reasoning set forth in those Exceptions into this Exception. The April 14, 1936 order does not direct any party to construct or maintain a pedestrian footbridge over Brush Creek. Therefore, the Commission cannot order Con-rail to inspect the pedestrian bridge pursuant to the April 14, 1936 order. The Commission can only order Conrail to maintain the pedestrian subway under Brush Creek pursuant to the order of April 14, 1936. The Law Bureau requests that the Ordering Paragraph No. 6 be modified to read as follows:

Upon completion of repairs to the pedestrian tunnel and the lights in the pedestrian tunnel that Consolidated Rail Corporation notify the Commission that the work has been completed.

In response, the Township stated:

6. The ordering Paragraph No. 6 should be sustained for the reasons set forth in Paragraph 1, above.

We agree with this exception of the Law Bureau to the extent that the ALJ concluded that Ordering Paragraph No. 6 is deficient as written. Our disposition of the issue of the pedestrian subway will be discussed below.

Conrail's Exceptions  
and  
Township's Reply to Exceptions

Conrail's Exceptions took the form of exceptions to the Findings of Fact, Discussion, Conclusions of Law, and Recommended Order.

Conrail's Exceptions to the Findings of Fact are as follows:

3. Finding of Fact number 3 of the Recommended Decision should reflect that the Commission, in its Order of April 14, 1936, failed to assign maintenance and/or construction responsibility or exercise jurisdiction over the span crossing Brush Creek in existence at that time, which remains, in part, in existence today and which is the subject of the Recommended Decision.

In reply, the Township stated:

1. Finding of Fact No. 3 should be sustained. The Commission Order of April 14, 1936 provides that the railroad would bear the cost of relocating or altering adjacent structures. The footbridge clearly constitutes an adjacent structure, and as such Finding of Fact No. 3 should be sustained.

We agree with Conrail's exception to the extent that the 1936 Order did fail to assign maintenance and/or construction responsibility over the span crossing Brush Creek in existence at that time. However, we assume that since the structure crossing over Brush Creek already existed at the time of the 1936 Order, the issue of crossing the creek required no further comment. We,

therefore, decline to modify Finding of Fact No. 3 in the manner suggested by Conrail.

Conrail's next exception was as follows:

10. Finding of Fact number 10 of the Recommended Decision provides that "[t]he Pennsylvania Railroad constructed and maintained it and Conrail has maintained it." The record in the within action is incapable of establishing that the Pennsylvania Railroad constructed the subject structure, which is believed to have been constructed in or about 1888. Furthermore, the record indicates that Consolidated Rail Corporation has provided only periodic maintenance to the subject structure without obligation, contractual or otherwise, or an order requiring that they do so.

In reply, the Township stated:

2. Finding of Fact No. 10 should be sustained. The transcript as cited in Finding of Fact No. 10 reveals testimony of Township Engineer Donald Glenn which states that the bridge was constructed by the Pennsylvania Railroad. The other transcript cites under Finding of Fact No. 10, reveal uncontested testimony that the Township never maintained the bridge and that Conrail always maintained the same.

On review of this exception, we agree with the Township that there is no error in Finding of Fact No. 10, and that it should be sustained.

Conrail's next exception is as follows:

14. Finding of Fact number 14 of the Recommended Decision should provide that Route 993 is adequate for pedestrian traffic

at or about the vehicular bridge over Brush Creek and the vehicular underpass under the railroad tracks.

In response, the Township stated as follows:

3. Finding of Fact No. 14 should be sustained. This finding as set forth is accurate and substantially supported by evidence in the record.

On review of this exception, we agree with the Township that Finding of Fact No. 14, as set forth, is accurate and substantially supported by the record evidence. We, therefore, deny this exception of Conrail.

Conrail's next exception is to the Discussion section of the R.D., as follows:

1. The Discussion Provision of the Recommended Order provides in pertinent part as follows:

Also the Township's exhibits reveal that at least the northern portion of the footbridge is within the railroad right-of-way. Township Reply Brief to Conrail at 1-2. (Recommended Decision at 23).

In support of this averment, the Reply Brief of North Huntington Township relies upon Township Exhibits A, B, H, and O, none of which establish that the subject structure extends to, is adjacent to, or is within the railroad right-of-way. The record is lacking of any evidence capable of establishing this.

In response, the Township stated:

4. The discussion provision excepted to in Paragraph 1 under the headline Discussion in

Conrail's Exceptions should be sustained. Each of the exhibits cited show the northern end of the footbridge to be on the railroad right-of-way. In fact the footbridge being immediately adjacent to the subway has to be on railroad right-of-way with the stream running right alongside the railroad line.

On review of this exception, we agree with the Township that there is no reason for us to modify the cited portion of the Discussion section. However, as will be further discussed below, we do not have jurisdiction over the footbridge over Brush Creek.

Conrail's next exception is as follows:

2. The Discussion Provision of the Recommended Decision provides, in pertinent part, as follows:

Finally, the Township notes that Mr. Cantwell testified that the footbridge was originally an at-grade vehicular crossing. Township Reply Brief to Conrail at 1-2. (Recommended Decision at 23).

Examination of the testimony cited in the Township Reply Brief reveals a mischaracterization of the testimony of Richard Cantwell, which is as follows:

Our records indicate that the bridge was first constructed approximately 1888, originally to cross Brush Creek as a vehicular bridge. (Tr. at 43).

This individual proffered no testimony that the subject footbridge was originally part of an at-grade vehicular crossing.

In reply, the Township stated as follows:

5. The discussion provision objected to in Paragraph 2 should be sustained. In addition

to testimony cited in Conrail's Exceptions, Mr. Cantwell also testified as follows:

"Subsequently to that, approximately 1939 or so, there was a project undertaken to relocate the highway that crossed at that location and in conjunction with that an under grade pedestrian bridge created beneath at that time Pennsylvania Railroad tracks."  
(Tr. p. 43)

The testimony clearly indicates the existence of a vehicular crossing.

On review of this exception, we again agree with the Township that there is no reason to modify the discussion provision objected to in Paragraph No. 2.

Conrail's next exception is as follows:

3. The Discussion Provision of the Recommended Decision provides in pertinent part as follows:

The Public Service Commission Order

But for the existence of the Public Service Commission Order of April 14, 1936, (Butler, et al v. Pennsylvania Railroad Company, et al., 15 P.S.C. 48 (1936) (hereafter, the April 14 Order, or Butler)) the Township's Complaint would be dismissed for lack of jurisdiction. The Commission can, however, enforce the Public Service Commission Order under Section 502 of the Public Utility Code, 66 Pa. C.S. §502, which gives the Commission the power to enforce any lawful order it has entered. (Recommended Decision pages 25-26).

Conrail notes that the Public Service Commission failed to exercise jurisdiction over the footbridge when it issued the April 14 Order. (Recommended Decision page 26).

It is also clear from the April 14 Order that the Public Service Commission provided for a

pedestrian underpass of the railroad tracks at the sight of the former at-grade crossing. ... It does not mention the pedestrian footbridge because it did not exist when the Order was issued. (Recommended Decision at 29).

The portion of the April 14 Order directing the railroad to maintain the pedestrian subway under the railroad tracks has no force and effect unless the pedestrian footbridge across Brush Creek is maintained. This is so even though the pedestrian footbridge did not exist when the April 14 Order was issued. (Recommended Decision at 31).

Although the subject span is not believed to have existed in its current state at the time of issuance of the April 14, 1936 Order, evidence indicates that a span existed at the same location and carried pedestrian and vehicular traffic across Brush Creek. This span is believed to have been later altered so as to render it inappropriate for vehicular traffic. As such, at the time of issuance of the April 14, 1936 Order, the use of the then existing span would have been of equal importance in facilitating the use of a pedestrian subway as it would be today. Nevertheless, the Commission failed to exercise jurisdiction over the subject structure spanning Brush Creek. As such, the Complaint filed on behalf of the Township should be dismissed for want of jurisdiction.

In reply, the Township stated as follows:

6. The discussion provision excepted to in Paragraph 3 of Conrail's Exceptions should be sustained. The Commission Order of April 14, 1936 did exercise jurisdiction over the footbridge as more fully discussed in Paragraph 1 of the Township's Reply to the Law Bureau's Exceptions.

We have discussed the issue of our jurisdiction over the footbridge supra. As stated, we assume that since the

structure crossing Brush Creek already existed at the time of the 1936 Order, the issue of crossing the creek required no further comment. We, therefore, deny this exception of Conrail.

Conrail's next exception was as follows:

4. The Discussion Provision of the Recommended Decision provides, in pertinent part, as follows:

Pennsylvania Railroad built the vehicular bridge in about 1888 and converted it to a pedestrian bridge in 1939. The Pennsylvania Railroad and Conrail have maintained the pedestrian bridge since 1939. (Recommended Decision at 31).

The record does not support or establish that the Pennsylvania Railroad engaged in construction and/or conversion of the subject span. The record further indicates that the Pennsylvania Railroad and/or Conrail performed only periodic maintenance upon the pedestrian bridge since 1939 without obligation, contractual or otherwise, or an order requiring that they do so.

In response, the Township stated:

7. The discussion provision excepted to in Paragraph 4, should be sustained. The record amply supports the facts that Conrail has maintained the bridge since 1939 and that the Township has never done so.

We agree again with the Township on this issue.

Conrail's next exception was as follows:

5. The Discussion Provision of the Recommended Decision sets forth in pertinent part as follows:

Conrail benefits from the pedestrian bridge because it is connected to the pedestrian tunnel. (Recommended Decision at 31)

Conrail files Exceptions to this provision as the pedestrian bridge appears significantly removed from the pedestrian tunnel. Furthermore, the testimony of Richard Cantwell of Conrail contradicts this provision. (Tr. 46). Furthermore, within 800 feet of the pedestrian tunnel there exists a vehicular bridge over Brush Creek and a vehicular underpass under the railroad right-of-way capable of safely accommodating pedestrian and vehicular traffic.

In reply, the Township stated as follows:

8. The discussion provision excepted to in Paragraph 5 should be sustained. The record clearly shows the footbridge to be immediately adjacent to the subway. Additionally, the record contains substantial evidence that the vehicular bridge to the east of the subject footbridge is not an adequate pedestrian alternative, being dangerous and unequipped to handle pedestrian traffic.

On review, we again agree with the Township on this issue, and we will, therefore, deny Conrail's exception.

Conrail filed the following Exceptions to the Conclusions of Law of the R.D.:

1. Conclusion of Law number 1 of the Recommended Decision should reflect that the Commission lacks jurisdiction over the subject matter of the within proceedings.

In reply, the Township stated as follows:

9. Conclusion of Law No. 1 should be sustained as the Commission has jurisdiction as more fully discussed in Paragraph 1 of the Township's Reply to the Law Bureau's Exceptions.

We have discussed the issue of the limits of our jurisdiction above. We refer here to our response to the Law Bureau's Exceptions on the issue of jurisdiction over the footbridge.

Conrail's next exception is as follows:

4. Conrail files exception to Conclusion of Law number 4 of the Recommended Decision. It is believed that without maintenance of the pedestrian bridge, the April 14, 1936 Order of the Public Service Commission at Complaint Docket No. 7238, 15 P.S.C. 48, would be given full force and effect.

In response, the Township stated:

10. Conclusion of Law No. 4 should be sustained, for the reasons set forth in Paragraph 1 of the Township's Reply to the Law Bureau's Exceptions.

On review of this issue, we are in agreement with the position of the Township, except to the extent to be discussed below.

Conrail's next exception was as follows:

5. Conrail files exception to Conclusion of Law number 5 which provides, "Conrail benefits from the pedestrian bridge and should maintain it at its sole cost and expense." To the contrary, Conrail derives no benefit from the existence of the subject pedestrian

bridge. Furthermore, within 800 feet of the pedestrian tunnel there exists a vehicular bridge over Brush Creek and a vehicular underpass under the railroad right-of-way capable of safely accommodating pedestrian and vehicular traffic. The chief complaint expressed by witnesses for the Township was that the approaches thereto are unsafe for pedestrian traffic as pedestrian traffic must walk along State Route 933. No consideration appears to have been given to the alternative of constructing a pedestrian sidewalk along state Route 933 at a cost believed to be significantly less than that of restoring and/or maintaining the subject pedestrian bridge.

In response, the Township stated:

11. Conclusion of Law Number 5 should be sustained as set forth in the two, immediately preceding paragraphs.

As we have discussed above, we do not have jurisdiction over the pedestrian bridge. We, therefore, grant this exception of Conrail.

Conrail's Exceptions to the Recommended Order are as follows:

1. The Commission is not vested with jurisdiction for the subject crossing and, therefore, cannot sustain the Township's Complaint.
2. Consolidated Rail Corporation files exception to Recommended Order number 2 of the Recommended Decision which imposes upon them maintenance responsibilities for the subject pedestrian bridge across Brush Creek in the Village of V, North Huntingdon Township, as the Commission lacks jurisdiction over this structure. Furthermore, Consolidated Rail Corporation derives no benefit from the existence of the subject pedestrian

bridge. Moreover, it is the position of Consolidated Rail Corporation that the alternative of constructing a pedestrian sidewalk along state Route 933 should be examined. Conrail incorporates herein as though set forth at length the entirety of the within Exceptions filed on its behalf.

3. Consolidated Rail Corporation files exception to Recommended Order number 3 of the Recommended Decision.

4. Consolidated Rail Corporation files exception to Recommended Order number 4 of the Recommended Decision, which directs it to conduct an indepth inspection of the superstructure and the substructure of the pedestrian bridge, as the Commission lacks jurisdiction over this structure. Furthermore, Consolidated Rail Corporation derives no benefit from the existence of the subject pedestrian bridge. Moreover, it is the position of Consolidated Rail Corporation that the alternative of constructing a pedestrian sidewalk along State Route 933 should be examined. Conrail incorporates herein as though set forth herein at length the entirety of the within Exceptions filed on its behalf.

5. Consolidated Rail Corporation files exception to Recommended Order number 5 of the Recommended Decision, which directs it to, within six (6) months from entry of the Commission's Order, submit to the Commission and all interested parties the results of the inspection referred to in paragraph 4 of this Order, along with plans and cost estimates for the rehabilitation or replacement of the foot bridge, depending upon the results of the inspection. It is the position of Conrail that the Commission lacks jurisdiction over the subject structure. Furthermore, Consolidated Rail Corporation derives no benefit from the existence of the subject pedestrian bridge. Moreover, it is the position of Consolidated Rail Corporation that the alternative of constructing a pedestrian sidewalk along state Route 933 should be examined. Conrail incorporates herein as though set forth herein at length

the entirety of the within Exceptions filed on its behalf.

In response, the Township stated:

12. Recommended Order Numbers 1-6 {sic} should be sustained for the reasons explained at length in this Reply and the Reply to the Law Bureau's Exceptions, except to the extent that the Docket Number listed in Paragraph 1 of the Recommended Order should be changed to reflect the correct docket number.

Consistent with the foregoing discussion we shall grant Conrail's Exceptions Nos. 1, 2, 4 and 5. Conrail's Exception No. 3 will be denied.

The subject Complaint involves a peculiar situation in that we have been requested to assign maintenance for a pedestrian footbridge which crosses neither railroad tracks nor a vehicular roadway, but a creek. There is confusion stemming from a 1936 Public Service Commission Order which directed the Railroad to maintain an adjacent subway passing below the tracks of Conrail but failed to mention the pedestrian footbridge. We believe the history of the "rail-highway" crossing must be examined in order to determine what action, if any, should be taken.

Originally, there was an at-grade crossing at the involved location which carried a roadway across the railroad tracks then onto a bridge crossing Brush Creek. That crossing was eliminated by the 1936 Order, but PennDOT was directed to construct a pedestrian subway at that crossing and the Railroad was directed to maintain the subway. PennDOT eventually abandoned the roadway, and a grade-separated crossing was constructed at a new location involving State Route 993. In converting the at-grade crossing into a pedestrian crossing, the

former vehicular bridge crossing the creek was modified so as to accommodate only pedestrian traffic.

Our jurisdiction has been questioned by Conrail and the Law Bureau since there is no longer vehicular traffic involved at the original location. We agree with their position that we do not have jurisdiction over a crossing which is used by pedestrians only except for the limited purpose of enforcing a prior Order. However, we believe it is safe to assume that the 1936 Order considered the safety and convenience of the residents of Larimer who previously travelled from one side of town to the other via the at-grade crossing in directing construction of a pedestrian subway. We believe it is also safe to assume that, since a structure over Brush Creek--albeit one which formerly accommodated vehicular traffic--already existed, the issue of crossing the creek required no further comment. At this point in time, if the Township wishes to promote the safety and convenience of its residents, it should make an effort to negotiate an agreement with Conrail and the involved utilities for replacement of the footbridge.

However, we share the Township's concern for the safety of its residents with respect to using the new rail-highway crossing involving State Route 993 which involves vehicular traffic. Since we do maintain jurisdiction over this active crossing, we would adopt Conrail's alternative suggestion to institute an investigation into the safety of traversing that crossing by foot; **THEREFORE,**

**IT IS ORDERED:**

1. That the Complaint of North Huntingdon Township at Docket No. 00913746 be, and hereby is, sustained to the extent that an investigation into the safety of the public travelling by

foot where State Route 993 crosses the tracks of Conrail shall be instituted.


2. That this matter be, and hereby is, assigned to the Office of Administrative Law Judge for such further proceedings as may be necessary, and for the issuance of a Recommended Decision.

3. That the Exceptions of Consolidated Rail Corporation be, and hereby are, granted in part, and denied in part, consistent with this Opinion and Order.

4. That the Exceptions of the Commission's Law Bureau be, and hereby are, granted to the extent that they are consistent with this Opinion and Order.

5. That the Consolidated Rail Corporation be, and hereby is, directed to make all necessary repairs to the pedestrian tunnel at the former at-grade crossing within six (6) months of the date of entry of this Opinion and Order.

BY THE COMMISSION,



John G. Miford  
Secretary

(SEAL)

ORDER ADOPTED: March 25, 1993

ORDER ENTERED: AUG 10 1993

DOCUMENT FOLDER

CURBLINE OLD ROUTE 29

42'0"

21'0"

7'0"

EXISTING WOODEN STAIRS

NIS R/W ROAD

TRACK

VIEW LOOKING EAST

SECRETARY'S BUREAU

155'0"

UNIMPROVED PATH TO WENZEL LANE

EDGE WENZEL LANE ELEV. 92.80

MAR 08 2004

NORFOLK SOUTHERN  
CONEMAUGH LINE, MP:64.9  
HARRAR TWP, PA.  
HORIZ SCALE: 1" = 20'  
VERT SCALE: 1" = 4'

100  
99  
98  
97  
96  
95  
94  
93  
92

D-20030534 11/9/04 05/4/7

N/S EXH. 5. + #1.

64487

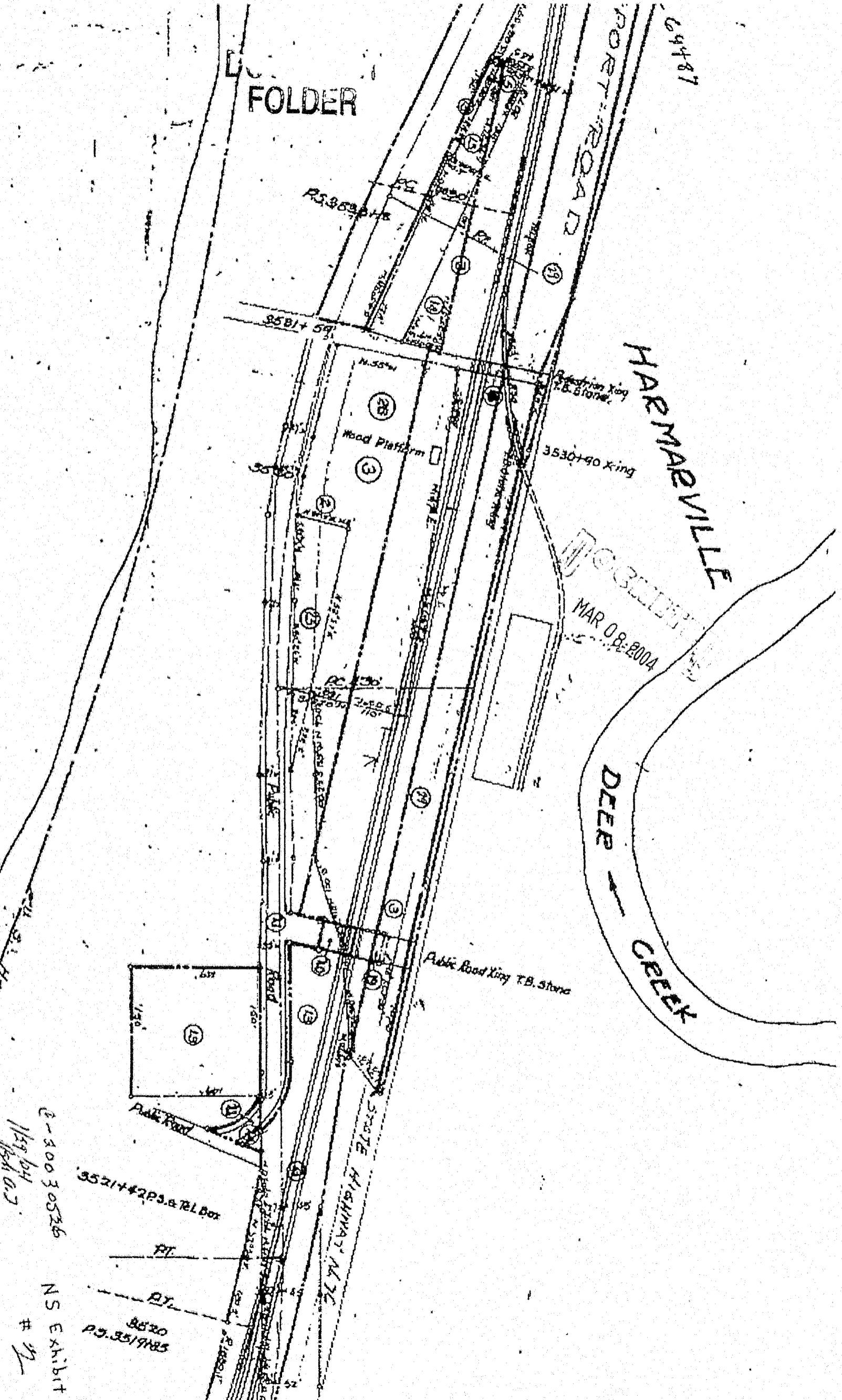
FOLDER

PORTER ROAD

HARMARVILLE

MAR 08-2004

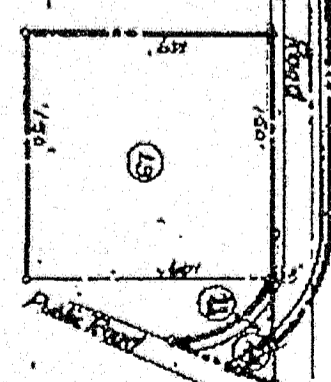
DEER CREEK



2-30030536  
 1/29/04  
 1/29/05  
 NS Exhibit # 12

3521+42 P.S. & T.L. Box

8620 P.S. 351985



Public Road King T.B. Stone

STATE HIGHWAY 147E

Mud Platform

3530+90 Xing

3581+59

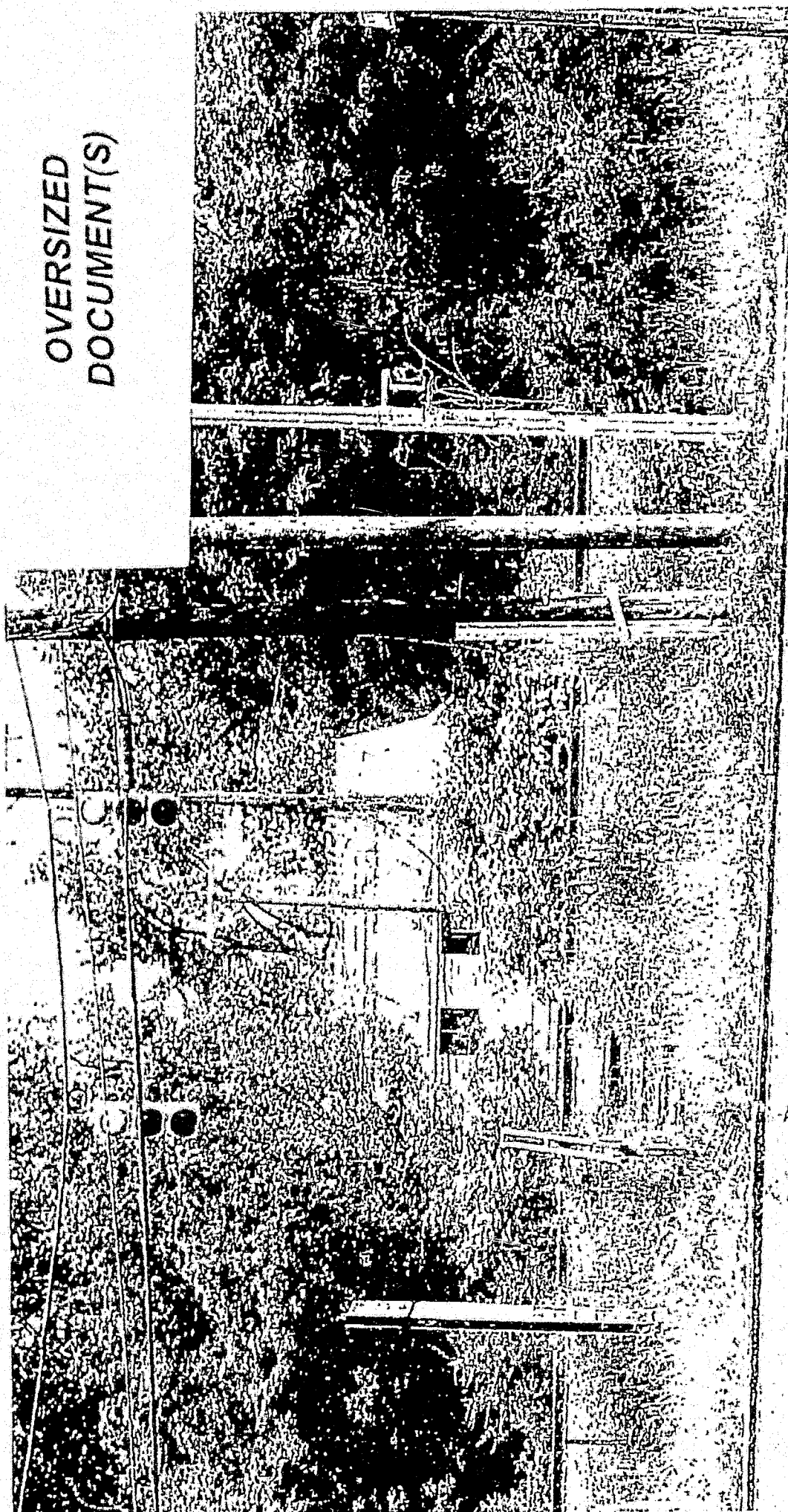
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211 S. 1. Box

PT.

PT.

OVERSIZED  
DOCUMENT(S)



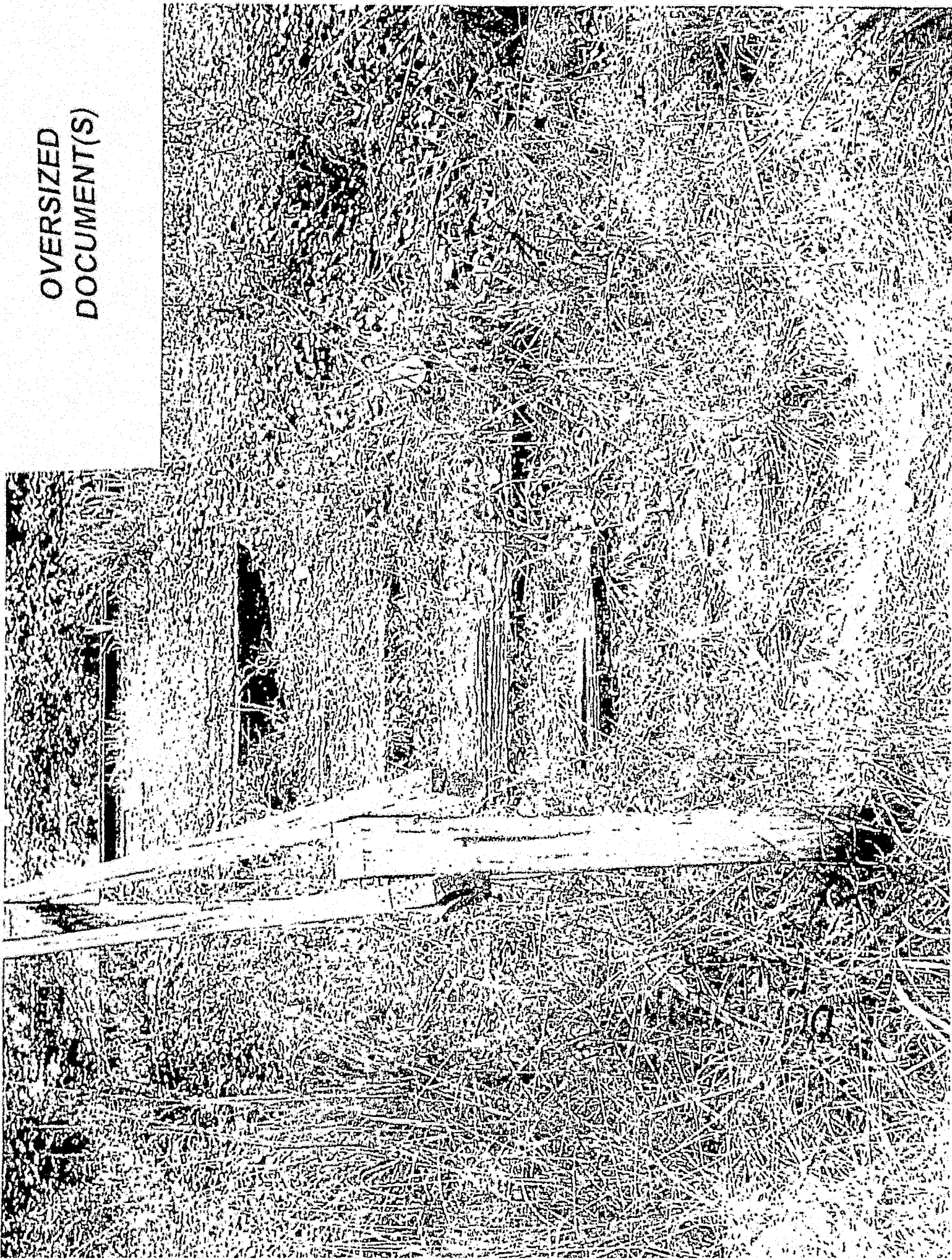
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C-20030526 1/29/04 Red by NS Ex 46.423

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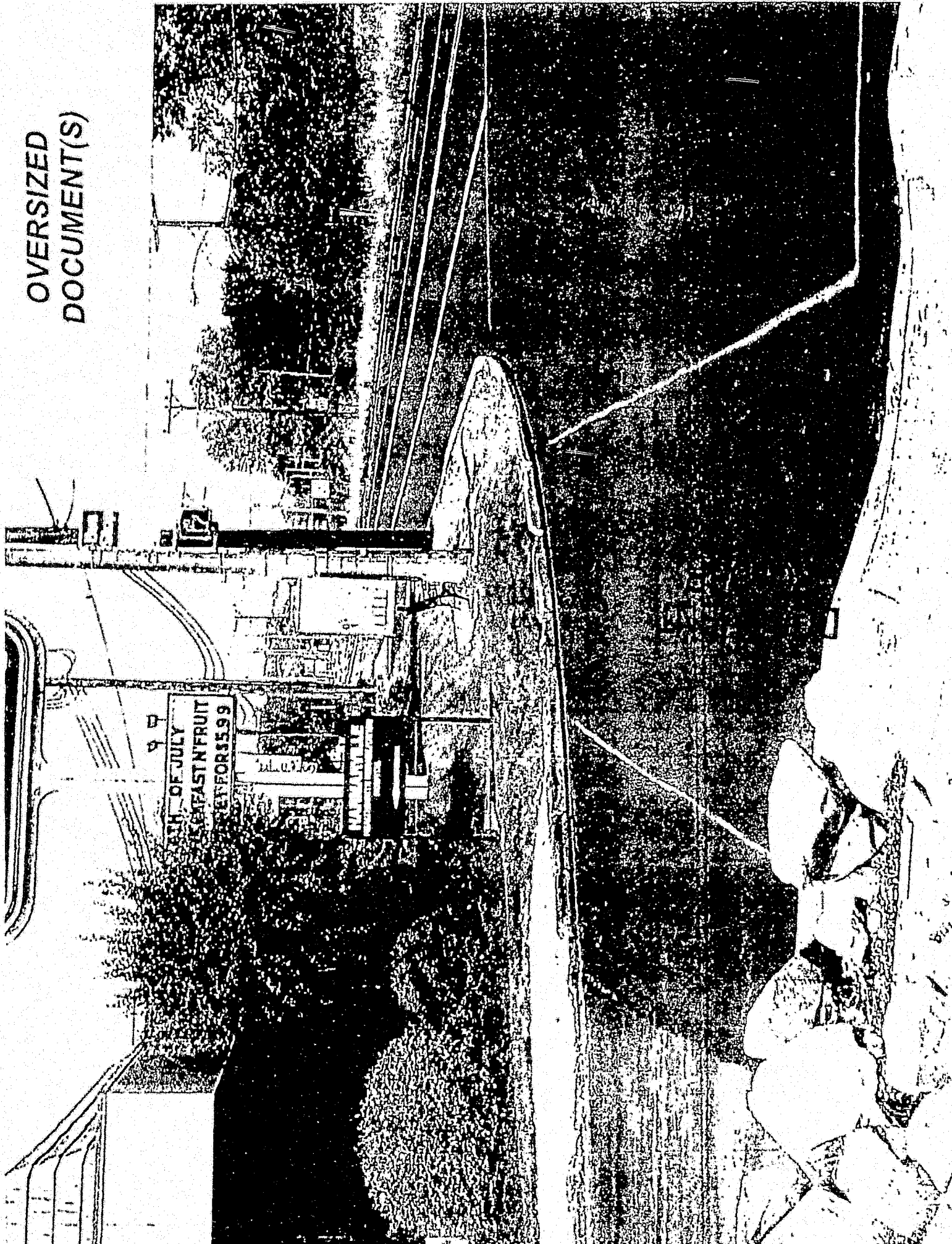
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C-200 30526 1/29/01 Page 02

B

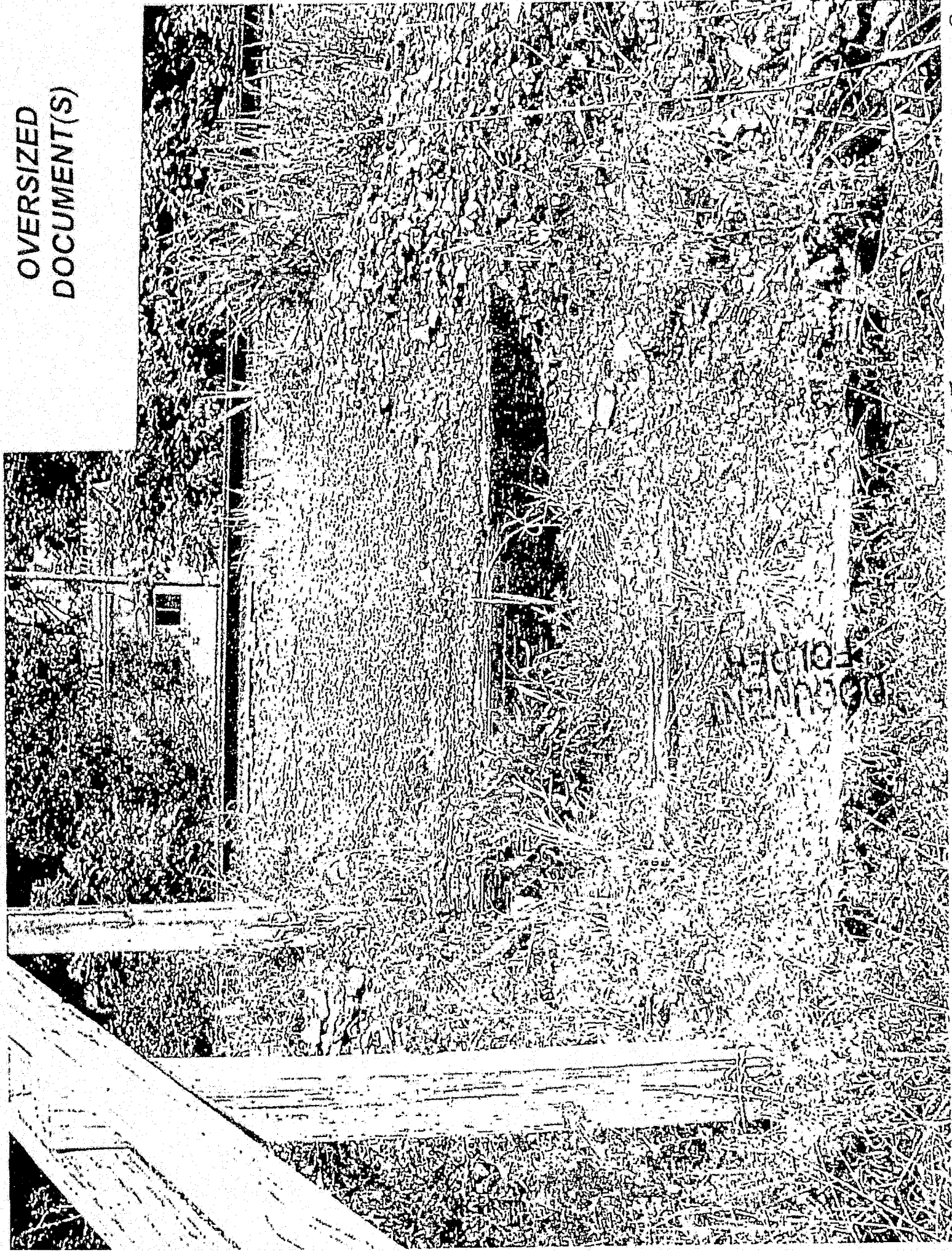
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0-200 30526 1/29/04 Pgh 0.7

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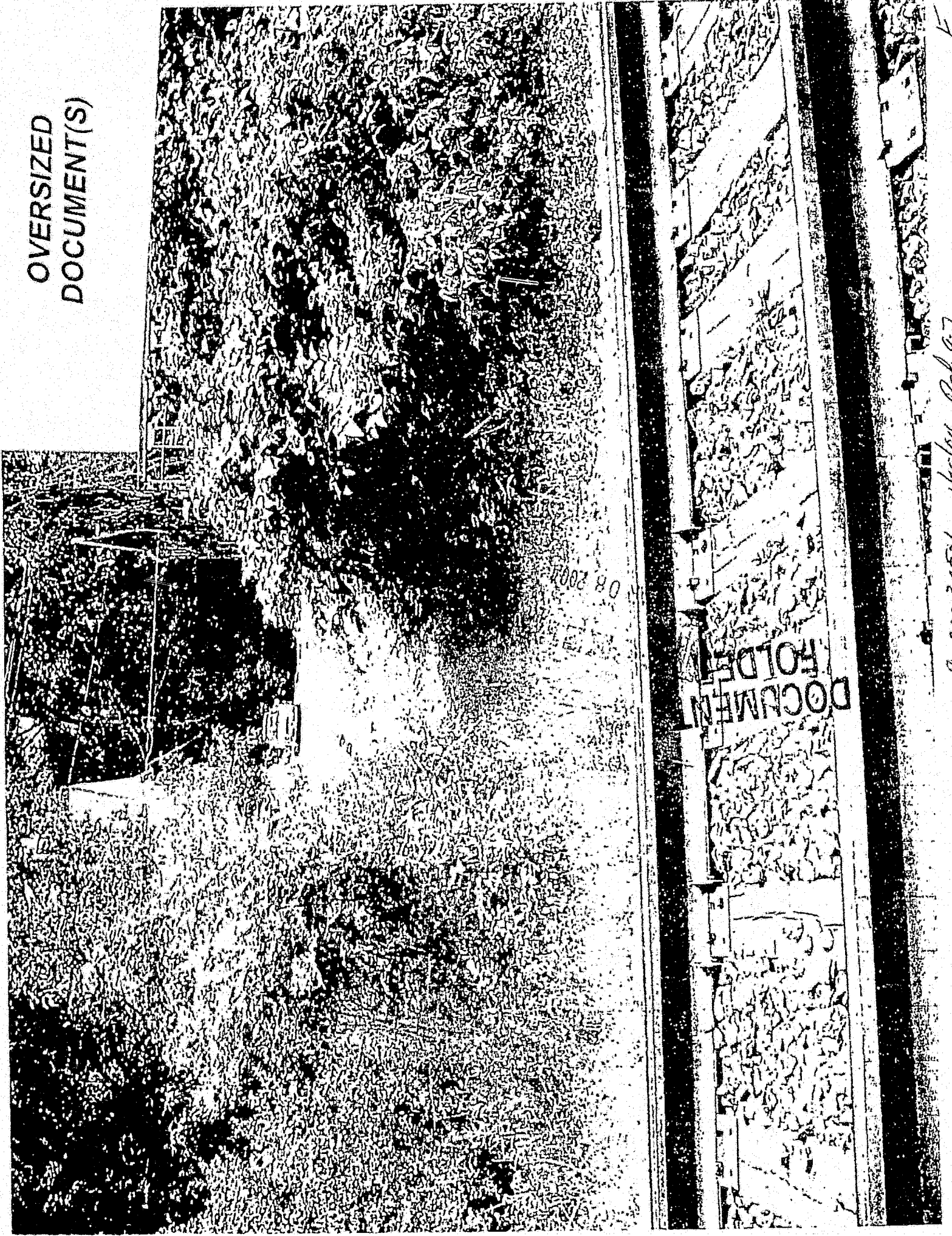
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N-20030526 11/29/04 Pzd. 07

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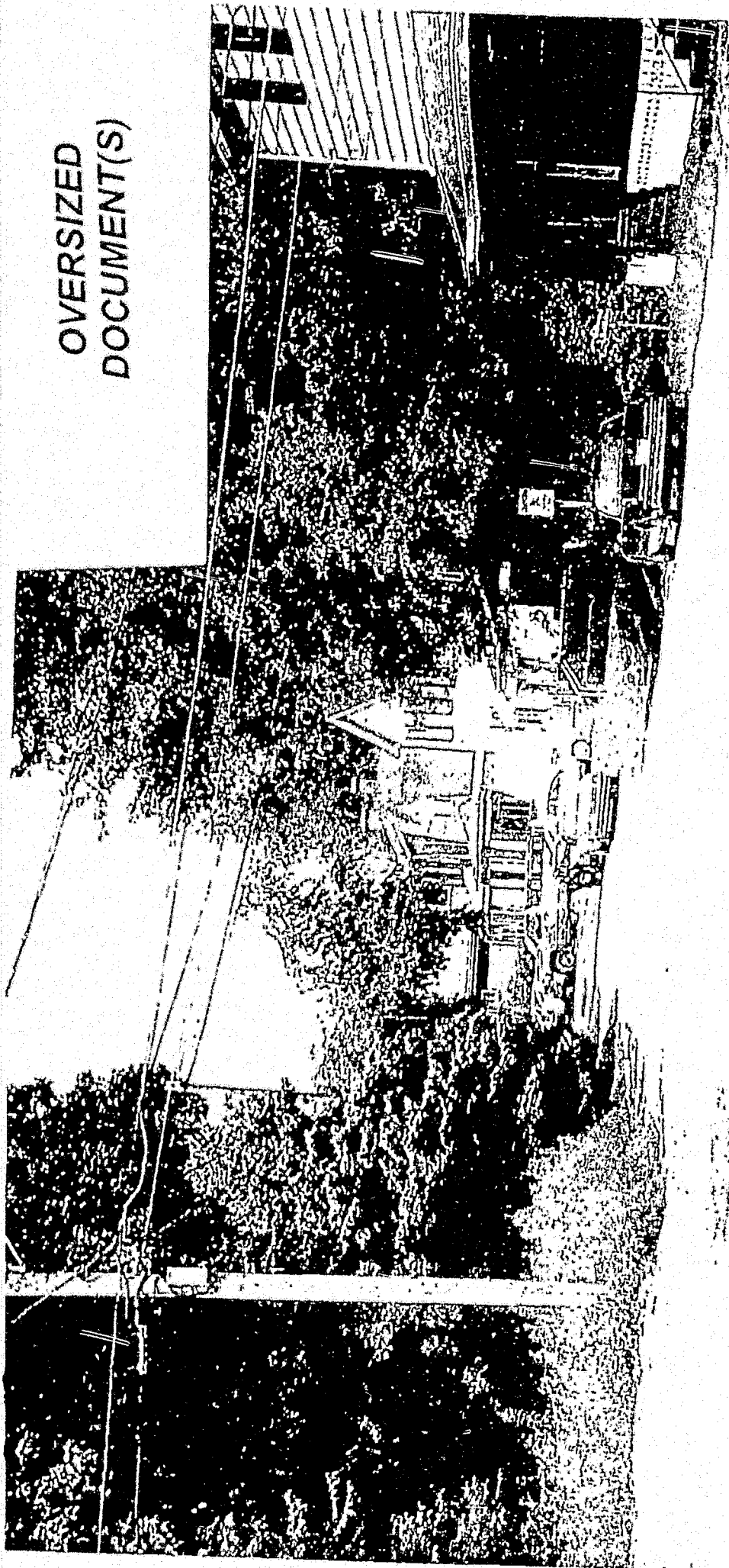


OR 2007

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P-20030526 1/29/04 BSA 0.7

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DOCUMENT(S)



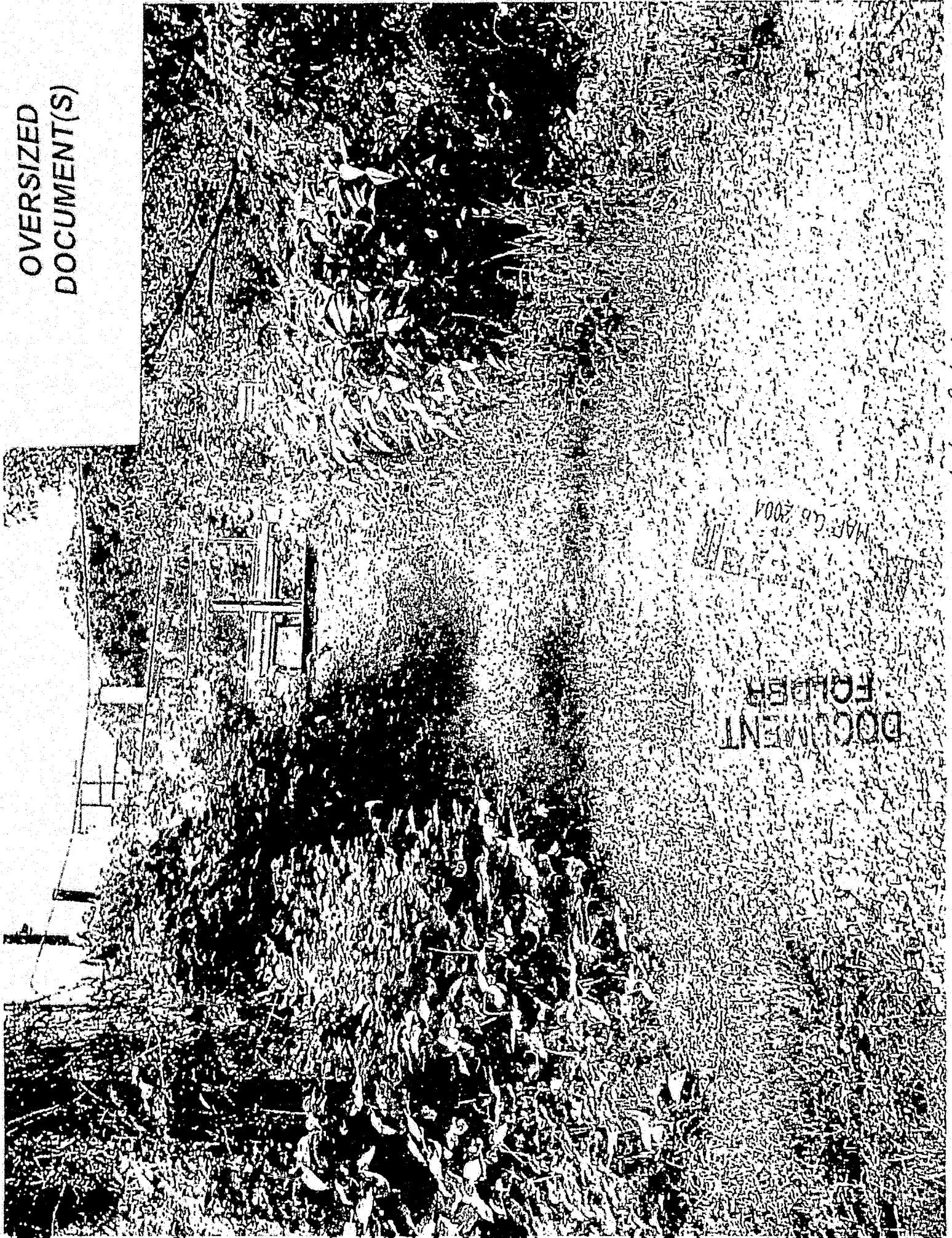
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MAR 08 2004

0-200 70526 1/19/04 Pbl 47

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DOCUMENT(S)



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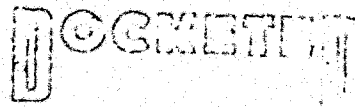
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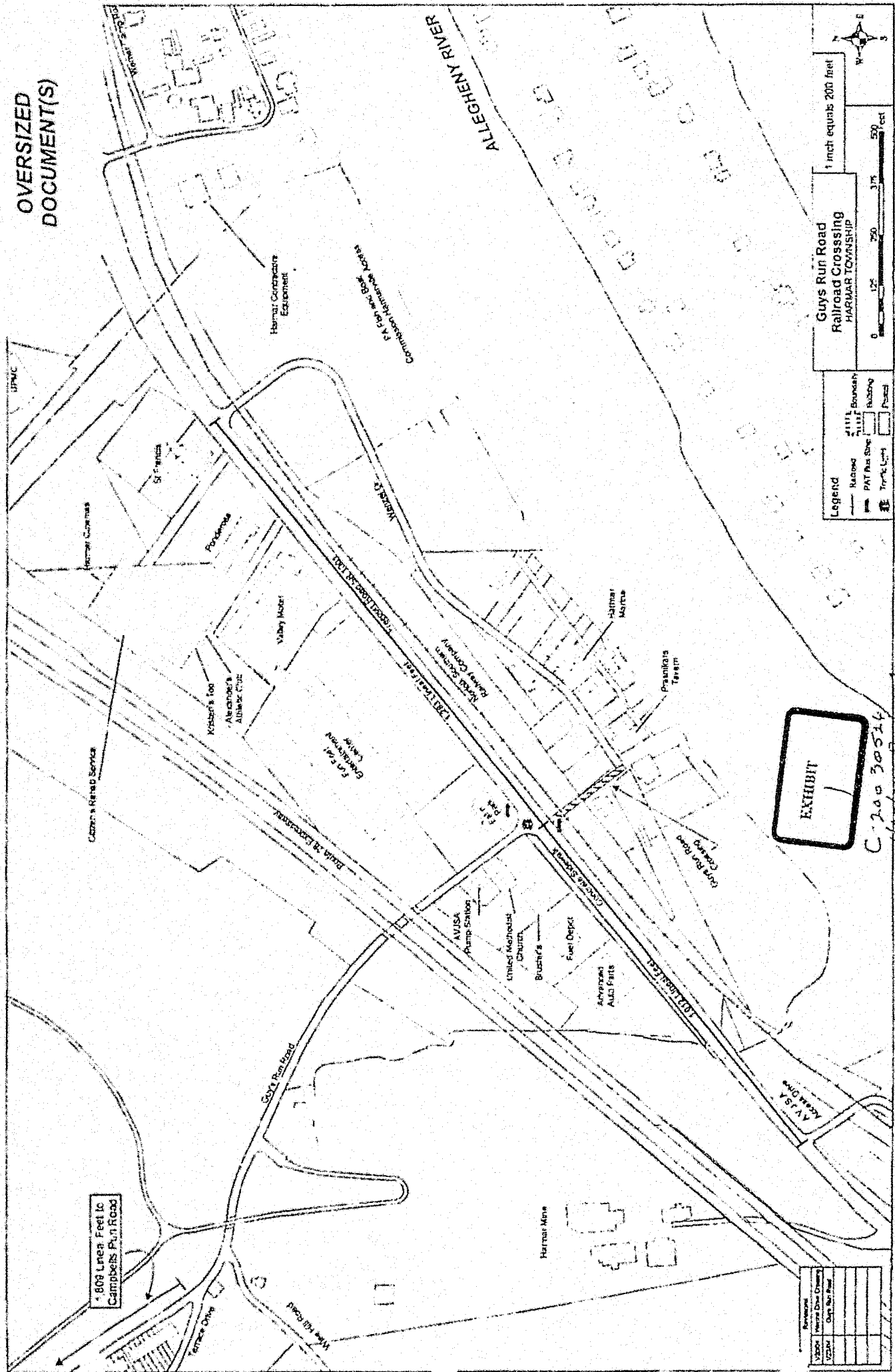
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MAR 08 2004

**HARMAR  
TOWNSHIP  
EXHIBITS**

OVERSIZED DOCUMENT(S)



1 inch equals 200 feet

Guys Run Road  
Railroad Crossing  
HARBAR TOWNSHIP

Legend

- Road
- Utility
- PAT Bus Stop
- Trunk Line
- Boundary
- Rubbing
- Right of Way

EXHIBIT 1

C-20030514  
11/16/04 8:24 AM

Revision	By	Date

\* 809 Lines Feet to  
Campbell's Pump Road

Before  
THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

—o000—

IN THE MATTER OF THE APPLICATION OF THE PENNSYLVANIA RAILROAD COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE EVIDENCING THE COMMISSION'S APPROVAL OF THE ABANDONMENT OF PUBLIC VEHICULAR CROSSING IMMEDIATELY WEST OF HARMARVILLE PASSENGER STATION, HARMAR TOWNSHIP, ALLEGHENY COUNTY, AND CONCLUDED MAINTENANCE AT THAT POINT OF A FOUR FOOT PEDESTRIAN CROSSING; EVIDENCING THE COMMISSION'S APPROVAL OF THE ABANDONMENT AND CLOSING OF EXISTING VEHICULAR AND PEDESTRIAN CROSSING APPROXIMATELY 850 FEET EAST OF HARMARVILLE PASSENGER STATION AND THE CONSTRUCTION OF A NEW VEHICULAR AND PEDESTRIAN CROSSING APPROXIMATELY 250 FEET WESTWARDLY FROM THE PRESENT CROSSING AND EVIDENCING THE COMMISSION'S APPROVAL OF THE DEDICATION OF AN APPROXIMATE 33 FOOT STRIP OF PROPERTY TO HARMAR TOWNSHIP, ALLEGHENY COUNTY, OF WHICH PETITIONER IS TO CONSTRUCT A 20 FOOT ROADWAY OF GRANULATED SLAG.

APPLICATION TICKET  
NO.

P E T I T I O N

TO THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA:

The petition of The Pennsylvania Railroad Company respectfully represents:

1. That your petitioner is a public service company of the Commonwealth of Pennsylvania and as such is engaged in the operation of a line of railroad, known as the Conemaugh Division, through the Borough of Harmarville, Harmar Township, Allegheny County, Pennsylvania.
2. That the name and address of your petitioner's attorney is Lambert McAllister, 925 Pennsylvania Station, Pittsburgh, Pennsylvania.
3. That said line of railroad crosses at grade in said Borough a public highway immediately west of Harmarville Passenger Station, identified as point "A" upon attached blueprint which is made a part hereof and identified as "Exhibit I"; that said line of railroad crosses at grade in said Borough a second public highway approximately 850 feet eastwardly from the Harmarville Passenger Station and identified as point "C" on said blueprint.
4. That your petitioner proposes to abandon and close the public crossing immediately west of the Harmarville Passenger Station identified as point "A" on the attached blueprint but proposes to maintain at this point a four foot crossing to accommodate pedestrian travel, that your petitioner proposes to abandon and close the public highway crossing now existing approximately 850 feet eastwardly from the Harmarville Passenger Station and identified as point "C" on attached blueprint and to construct a new public highway crossing approximately 250 feet westwardly from said existing crossing, the new crossing being shown on attached blueprint and being identified as point "B"; that your petitioner will dedicate to Harmar Township, Allegheny County, Pennsylvania, a strip of property approximately 33 feet in width from the present existing highway 850 feet east of Harmarville Passenger Station to highway which crosses petitioner's tracks immediately west of the Harmarville

EXHIBIT

2

C-20.0305-26  
11/29/04 Pgh. A.J.

RECORD

Passenger Station, as shown in yellow on attached blueprint marked "Exhibit X" and petitioner proposes to construct upon said strip of property a twenty foot roadway of granulated slag.

5. That the closing of the existing vehicular crossing at point "A" and the relocation at point "B" of the public highway crossing now existing at point "C" as shown on attached blueprint will promote safety of the traveling public and are therefore necessary and proper for the service, accommodation and convenience of the public.

WHEREFORE, Your petitioner prays your Honorable Commission to issue a certificate of public convenience evidencing its approval of the abandonment of public vehicular crossing immediately west of Harmarville Passenger Station, Harmar Township, Allegheny County, and continued maintenance at that point of a four foot pedestrian crossing; evidencing the Commission's approval of the abandonment and closing of existing vehicular and pedestrian crossing approximately 850 feet east of Harmarville Passenger Station and the construction of a new vehicular and pedestrian crossing approximately 250 feet westwardly from the present crossing and evidencing the Commission's approval of the dedication of an approximate 53 foot strip of property to Harmar Township, Allegheny County, on which petitioner is to construct a twenty foot roadway of granulated slag.

THE PENNSYLVANIA RAILROAD COMPANY.

By: [Signature]

Superintendent.

STATE OF Pennsylvania

COUNTY OF Allegheny

ss:

[Signature] Superintendent

of The Pennsylvania Railroad Company, being first duly sworn on oath deposes and says that he has read the foregoing petition by him subscribed and that the statements therein contained are true and correct to the best of his knowledge and belief.

Sworn and subscribed to before me this 1-14 day of December A.D. 1929.

[Signature]  
Notary Public

HEAT

Form L-2-1034

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

A. 21270-1930.

IN THE MATTER OF THE APPLICATION OF

THE ALLEGHENY VALLEY RAILROAD COMPANY,  
under Section 5, Article III, and Sections 12, 13 and  
19, Article V, of the Public Service Company Law, for  
the approval of the alteration of an existing  
crossing at grade from a vehicular to a pedestrian  
crossing, at point where tracks of said railroad com-  
pany cross a township highway in Larran Township,  
Allegheny County, Pennsylvania, immediately west  
of Hamarville passenger station, said railroad  
company; and, also for the abolition of another  
crossing, at grade, where township highway crosses  
tracks of the said railroad company, approximately  
eight hundred and fifty (850) feet east of Hamar-  
ville station; and, also for the construction of crossing, at  
grade, at point where new connecting highway will cross tracks of the said  
railroad company and the tracks of the Allegheny Valley Street Railway  
Company, approximately six hundred feet east of Hamarville station.  
The Public Service Commission of the Commonwealth of Pennsylvania hereby certifies that after  
an investigation and/or hearing had on the above entitled application, it has, by its report and order made  
and entered, a copy of which is hereto attached and made a part hereof, found and determined that the

CERTIFICATE  
OF  
PUBLIC CONVENIENCE

granting of said application is necessary and proper for the service, accommodation, convenience and safety  
of the public, and this certificate is issued evidencing its approval of the said application as set forth in  
said report and order.

In Testimony Whereof, THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH  
OF PENNSYLVANIA has caused these presents to be signed and sealed, and duly attested by its Secre-  
tary at its office in the city of Harrisburg this 25th day of Sept., 1930.

Attest:

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

*[Handwritten Signature]*

Secretary

Chairman

EXHIBIT  
3

2003  
REC  
C-200 30526  
1129/04 Pgh.A.J.

FILED

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

Application Docket No. Z1878-1930

In re: Application of THE PENNSYLVANIA RAILROAD COMPANY, for the approval of the alteration of an existing crossing, at grade, from a vehicular to a pedestrian crossing, at point where tracks of said railroad company cross a township highway in Harmar Township, Allegheny County, Pennsylvania, immediately west of Harmarville Passenger Station, said railroad company; and, also for the abolition of another crossing, at grade, where township highway crosses tracks of the said railroad company, approximately eight hundred and fifty (850) feet east of Harmarville Station; and, also for the construction of crossing, at grade, at point where a new connecting highway will cross the tracks of said railroad company and the tracks of the Allegheny Valley Street Railway Company, approximately six hundred (600) feet east of Harmarville Station.

REPORT AND ORDER

BY THE COMMISSION:

The tracks and right-of-way of The Pennsylvania Railroad Company cross at grade in the vicinity of its Harmarville Passenger Station in Harmar Township, Allegheny County, two township highways connecting with State Highway Route 70, locally known as Freeport Road. The street railway tracks of the Allegheny Valley Street Railway Company parallels said State Highway Route 70 on the east side. The first crossing is immediately west of Harmarville Passenger Station, and the second township crossing is approximately eight hundred and fifty (850) feet east of said station.

It is proposed by this proceeding to alter or change first grade crossing west of Harmarville Station from a vehicular and pedestrian crossing to a four foot pedestrian crossing at grade, and to abolish the second crossing about eight hundred and fifty (850) feet east of the Harmarville Passenger Station. Under the plan submitted, a new connecting township highway is to be constructed from the township road west of the station to the township road eight hundred and fifty (850) feet east of the station, and to construct a new highway leading from the aforesaid new connecting highway to State Highway Route 70. This latter new highway will cross at grade the tracks of The Pennsylvania Railroad Company, and Allegheny Valley Street Railway Company at point approximately six hundred (600) feet east of the Harmarville Station. The street railway track at point of new crossing is about eleven (11) inches higher than the State Highway Route 70, and will be lowered to meet the grade of the State Highway. The Department of Highways; Township Supervisors of Harmar Township, and the Allegheny Valley Street Railway Company have approved the proposed improvement. The Pennsylvania Railroad Company will bear all expenses in connection with the entire improvement, and after construction the Allegheny Valley Street Railway Company will maintain new highway crossing over its tracks; The Pennsylvania Railroad Company maintain crossings over its tracks, and the Township of Harmar will maintain the new connecting highways.

EXHIBIT

4

C-20050526  
1129/04 Pgh. 27

The Commission from consideration of the record finds and determines that the approval of the application in accordance with plan dated January 4, 1929, and identified as Exhibit 3 at hearing of May 15, 1930, as modified with respect to lowering the tracks of Allegheny Valley Street Railway Company, the elevation of the concrete paving, State Highway Route 70, and agreement of parties, and the issuance of a certificate of public convenience in evidence thereof, subject to the following conditions is necessary and proper for the service, accommodation and convenience of the public:

FIRST: That the new grade crossings over tracks of the Allegheny Valley Street Railway Company and The Pennsylvania Railroad Company shall be planked solid or paved between rails for a distance of eighteen inches outside of each rail for a width of twenty-eight feet measured at right angles to the center line of the highway.

SECOND: That the approaches of the new grade crossing shall be graded for a width of twenty-eight feet and surfaced with cinder, slag or broken stone thoroughly compacted for a width of at least twenty feet.

THIRD: That the crossing immediately west of Harmarville Station altered and changed from vehicular to pedestrian crossing shall be planked or paved for a width of four feet.

FOURTH: That adequate drainage facilities to properly drain the highway at point of the new crossing shall be installed and maintained.

FIFTH: That standard railroad crossing warning signs shall be erected and maintained at the new crossing.

SIXTH: That the top rail of the track of the Allegheny Valley Street Railway Company at point of new highway crossing shall be lowered to meet the elevation of the concrete paving of said State Highway Route 70.

SEVENTH: That all costs and expenses in connection with the entire improvement shall be borne and paid for by The Pennsylvania Railroad Company and the maintenance of the new crossing over tracks of the Allegheny Valley Street Railway Company shall be borne and paid for by said company, and the maintenance of the new crossing over tracks of The Pennsylvania Railroad Company as well as pedestrian crossing shall be borne by The Pennsylvania Railroad Company, and the maintenance of the new connecting highways shall be borne and paid for by the Township of Harmar.

EIGHTH: That when the new crossings are constructed and opened to public travel and crossing eight hundred and fifty feet east of Harmarville Station abolished shall be properly barricaded by The Pennsylvania Railroad Company, and the barricades thereafter maintained by said company.

NINTH: That new connecting highways shall be graded for a width of twenty-eight feet and surfaced for a width of twenty feet with granulated slag and that necessary drainage structures to properly drain the highway shall be constructed.

THAT: That all work in connection with the improvement shall be made in a proper and substantial manner.

That the following highway be, from the date hereof, hereby laid out and established and opened:

(a) A new highway be laid out at a point in the township highway extending across the east side of the road to the road company west of the station of the Pennsylvania Railroad Company north of said crossing, and extending thence in a general northerly direction for a distance of approximately 1000 feet to a junction with a township highway extending northerly to the crossing to be abolished; alignment, width and grade to be as shown on the approved plan.

(b) A new highway be laid out at a point in the State Highway No. 20 approximately 100 feet east of the crossing to be abolished and extending thence in a southerly direction across the track of the Allegheny Valley Street Railway Company and the tracks of the Pennsylvania Railroad Company a distance of 100 feet to a junction with the new connecting highway above laid out; alignment, width and grade to be as shown on the approved plan.

It is further ordered that the following properties are hereby appropriated for the right-of-way of the new highways:

All that certain strip of property of the Pennsylvania Railroad Company, 33 feet in width, extending along the southerly right-of-way line of said Pennsylvania Railroad Company from a point 73 feet westwardly from the center line of Harmorville Passenger Station of the said Pennsylvania Railroad Company to a point 330 eastwardly from the said line of the said passenger station, including the southerly approach to a proposed grade crossing located 604 feet eastwardly from the center line of said passenger station bounded and described as follows, to-wit:

Beginning at a point in the southerly right-of-way line of The Pennsylvania Railroad Company; said line having a bearing south 79°25' west from a certain monument stone for a distance of 41.1 feet; said stone being located 868.8 feet eastwardly from the center line of the said Pennsylvania Railroad Company's Harmorville Passenger Station; said distance being measured along the center line of the said Pennsylvania Railroad Company; and distant 30.2 feet southeasterly at right angles from said center line; thence south 39°25' west 219.1 feet to a stone; thence south 41°42'27" west 100.08 feet to a stone; thence south 39°25' west 100 feet to a stone; thence south 40°26'52" west 201 feet to a point; thence south 42°21'58" west 101.8 feet to a point; thence south 50°12'11" west 47.4 feet to a point; thence south 54°39' west 45 feet; thence south 57°08'15" west 115.6 feet; thence north 27°02' west 33.1 feet; thence north 57°08'15" east 110.9 feet; thence north 54°39' east 43.0 feet; thence north 50°12'11" east 44.1 feet; thence north 42°21'58" east 99.2 feet; thence north 40°26'52" east 200 feet; thence north 39°25' east 100 feet; thence north 41°42'27" east 79.43 feet; thence north 37°03' west 39.7 feet; thence north 52°57' east 33 feet; thence south 37°03' east 32.6 feet; thence north 39°25' east 150.2 feet; and thence along the arc of a curve to the right with a radius of 103 feet a distance of 85 feet to the point and place of beginning. Containing an area of 0.854 acres more or less.

OVERSIZED DOCUMENT(S)

Block 2

All that certain parcel of property of the Pennsylvania Railroad Company to be used as a right of way for a public road, the boundary and location thereof being as follows: Beginning at the center line of the Pennsylvania Railroad Company's Hermarville Passenger Station, thence south 27° 52' east along the said westerly line of the said public road a distance of 48.2 feet; thence along the arc of a curve in a north-westerly direction for a distance of 100.73 feet, said curve having a radius of 70 feet to a point in the southerly right of way line of said Pennsylvania Railroad Company; and thence along said southerly right of way line north 39° 25' east 75.8 feet to the point and place of beginning. Containing an area of 1599.1 square feet more or less.

Beginning at a point 100.73 feet north of the center line of the Pennsylvania Railroad Company's Hermarville Passenger Station, thence south 27° 52' east along the said westerly line of the said public road a distance of 48.2 feet; thence along the arc of a curve in a north-westerly direction for a distance of 100.73 feet, said curve having a radius of 70 feet to a point in the southerly right of way line of said Pennsylvania Railroad Company; and thence along said southerly right of way line north 39° 25' east 75.8 feet to the point and place of beginning. Containing an area of 1599.1 square feet more or less.

All that certain parcel of property of the Pennsylvania Railroad Company, lot of line address, beginning at the center line of the Pennsylvania Railroad Company's Hermarville Passenger Station, thence south 27° 52' east along the said westerly line of the said public road a distance of 48.2 feet; thence along the arc of a curve in a north-westerly direction for a distance of 100.73 feet, said curve having a radius of 70 feet to a point in the southerly right of way line of said Pennsylvania Railroad Company; and thence along said southerly right of way line north 39° 25' east 75.8 feet to the point and place of beginning. Containing an area of 1599.1 square feet more or less.

Beginning at a point in the westerly line of the said Pennsylvania Railroad Company, thence south 27° 52' east along the said westerly line of the said public road a distance of 48.2 feet; thence along the arc of a curve in a north-westerly direction for a distance of 100.73 feet, said curve having a radius of 70 feet to a point in the southerly right of way line of said Pennsylvania Railroad Company; and thence along said southerly right of way line north 39° 25' east 75.8 feet to the point and place of beginning. Containing an area of 1599.1 square feet more or less.

IT IS PUBLICLY ORDERED: That effective upon the completion of new highways and new grade crossing that portion of the township highway approximately eight hundred and fifty feet east of Hermarville station between the property line of the Allegheny Valley Street Railway Company on the north side of its track and the southerly property line of the Pennsylvania Railroad Company be, and is hereby vacated;

IT IS PUBLICLY ORDERED: That a certificate of public convenience issue evidencing the Commission's approval of this application as above determined.

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

*[Handwritten signature]*

ATTEST:

*[Handwritten signature]*

RECORDED  
INDEXED

180

OVERSIZED  
DOCUMENT(S)

**OVERSIZED  
DOCUMENT(S)**



EXHIBIT  
5A

C- 20030526  
1129104 Pyl. 07

picture 141.jpg (2048x1536x24b jpeg)

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DOCUMENT(S)**

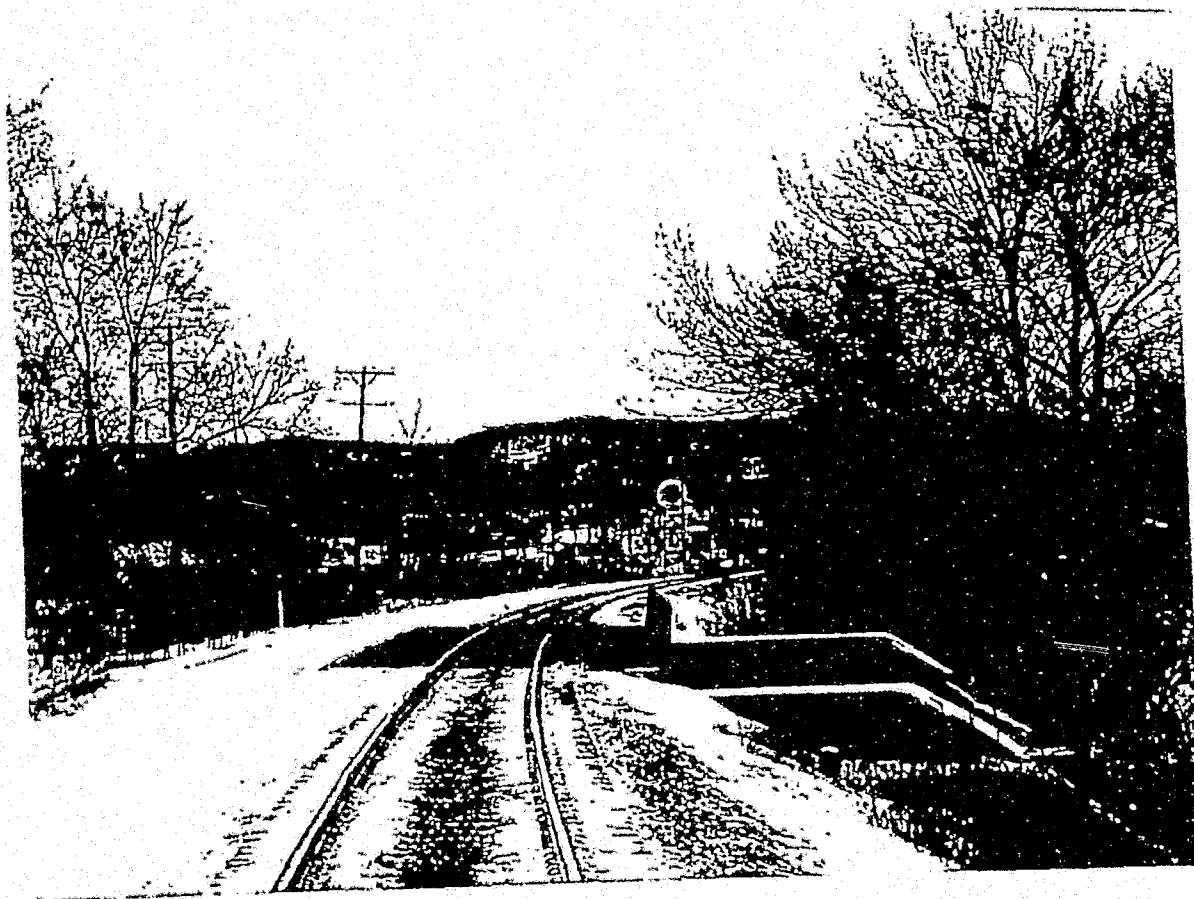
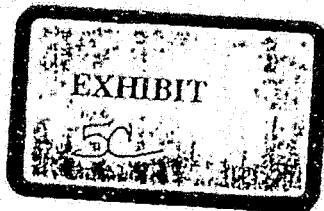
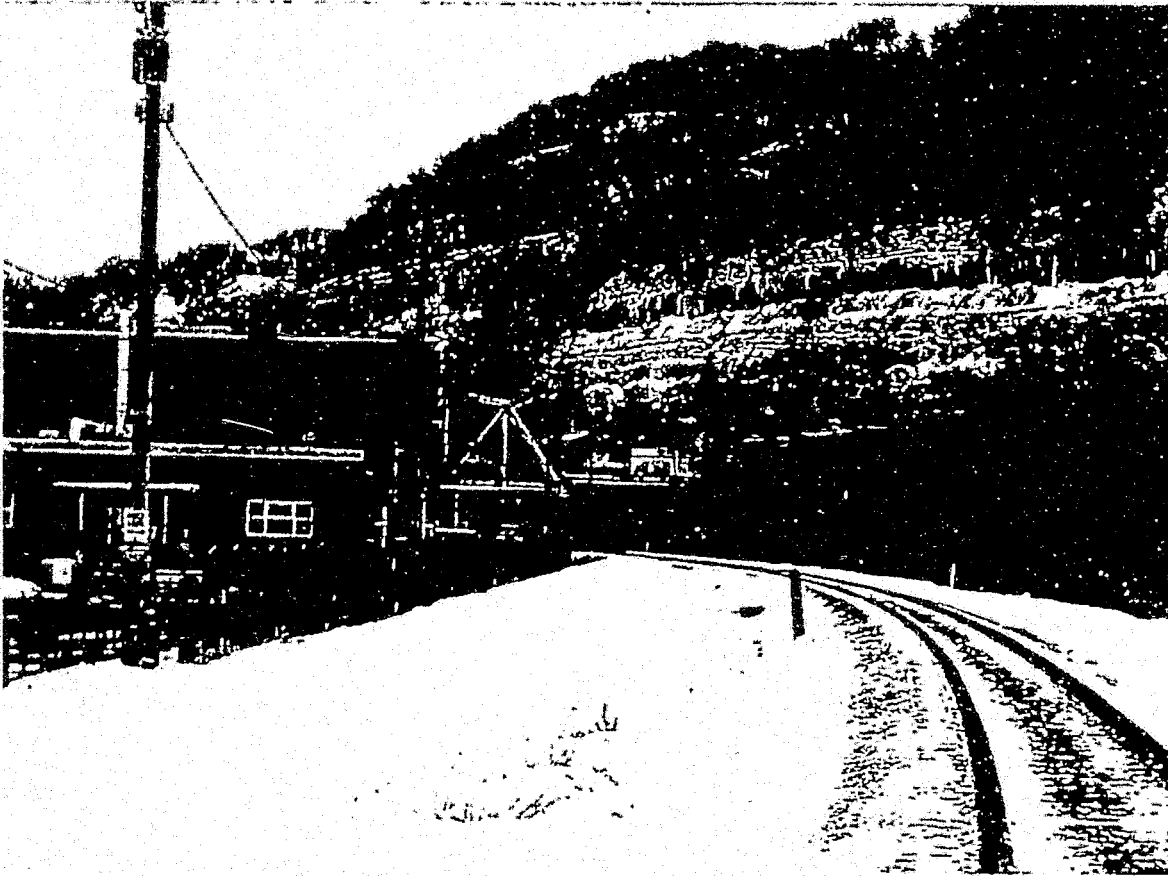


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C-20030526  
1/29/04 Pgh 07.

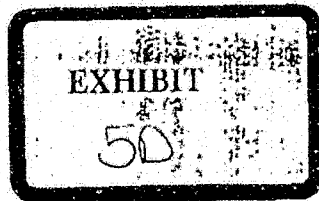
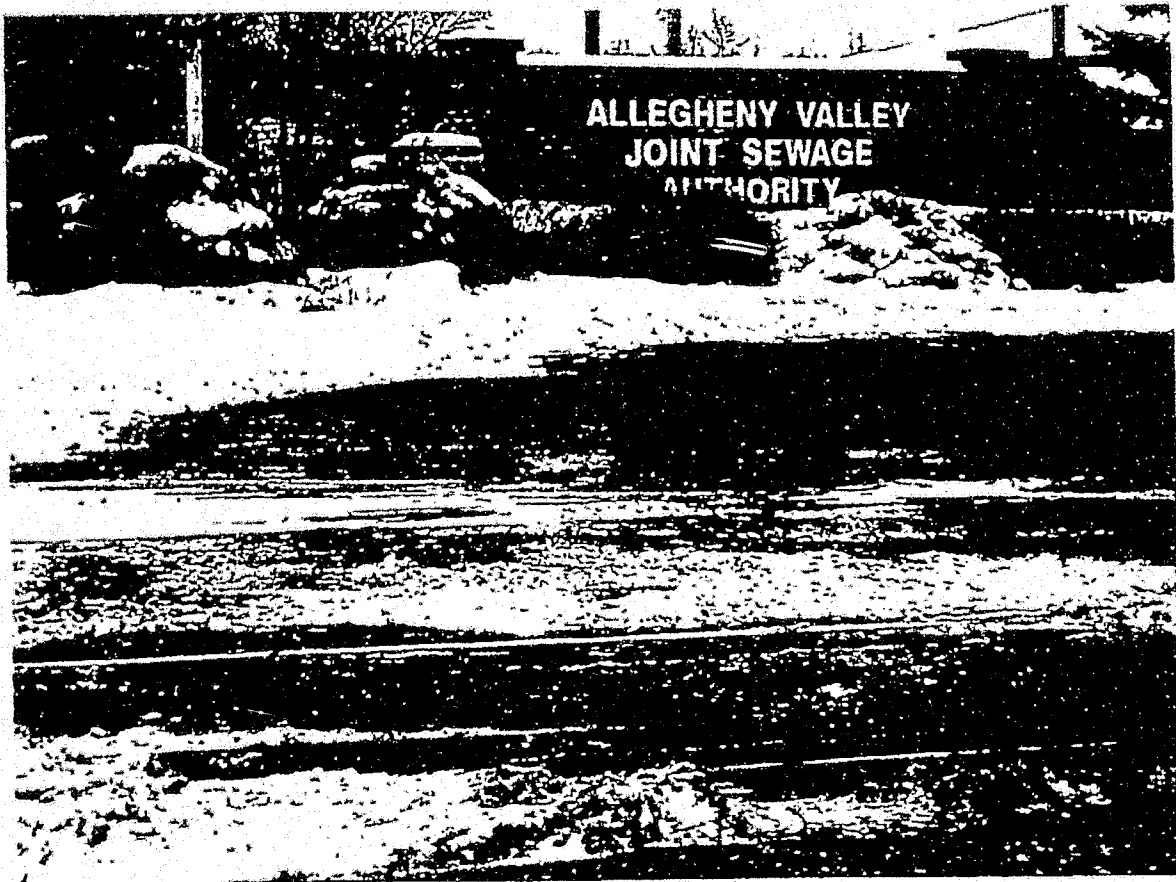
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DOCUMENT(S)**



C-200 30526  
1/24/04 Pgh a.J

**OVERSIZED  
DOCUMENT(S)**



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1/29/04 Pzh.aj

picture 161.jpg (2048x1536x24b jpeg)

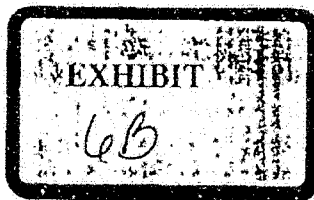
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Q-20030526  
1/29/04 Psh a.7

picture 154.jpg (2048x1536x24b jpeg)

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DOCUMENT(S)



C-200 30526  
1/29/04 Pgf. 03

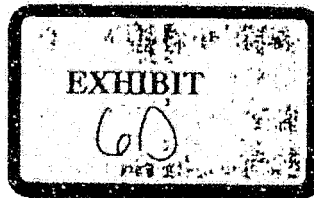
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DOCUMENT(S)



EXHIBIT  
6C

C-20030526  
11/29/04 Psh ay.

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DOCUMENT(S)



0-20030526  
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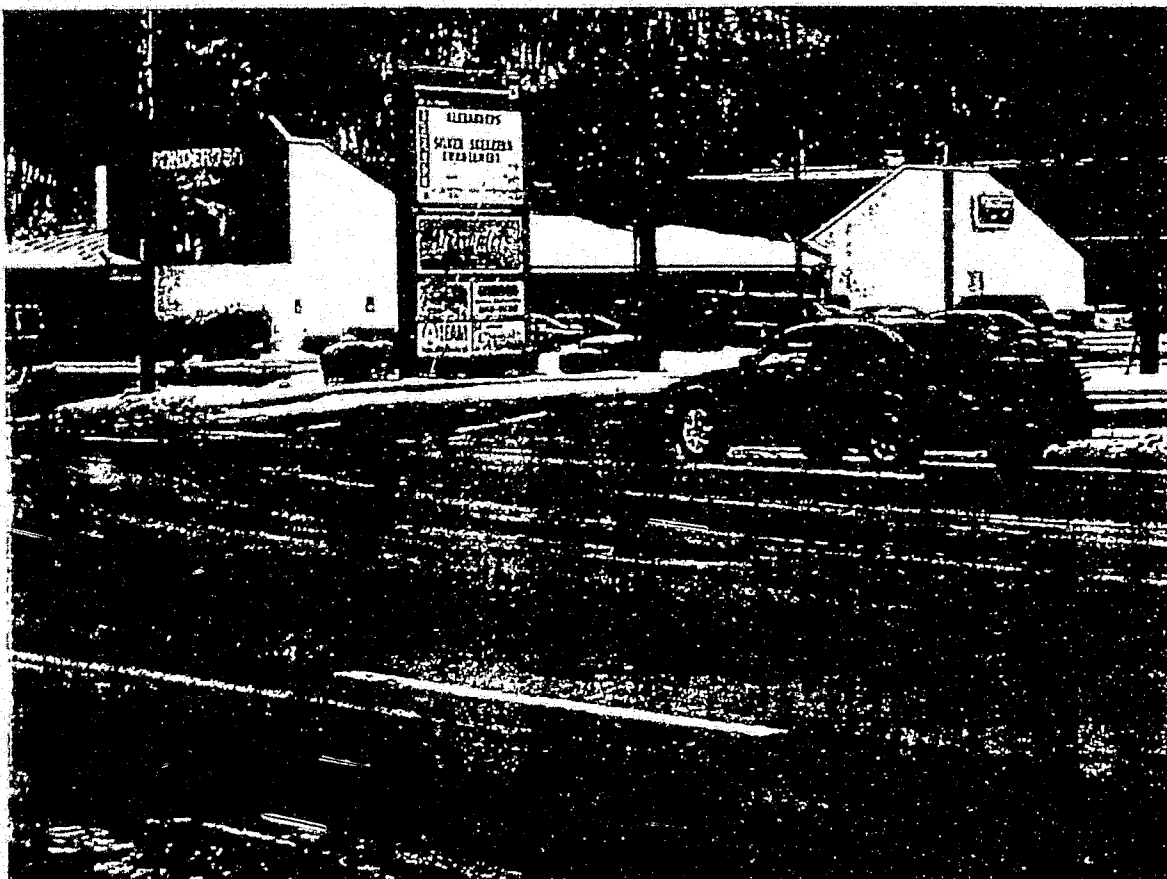


EXHIBIT  
7A

C-20030526  
11/29/04  
Pgh O.J.

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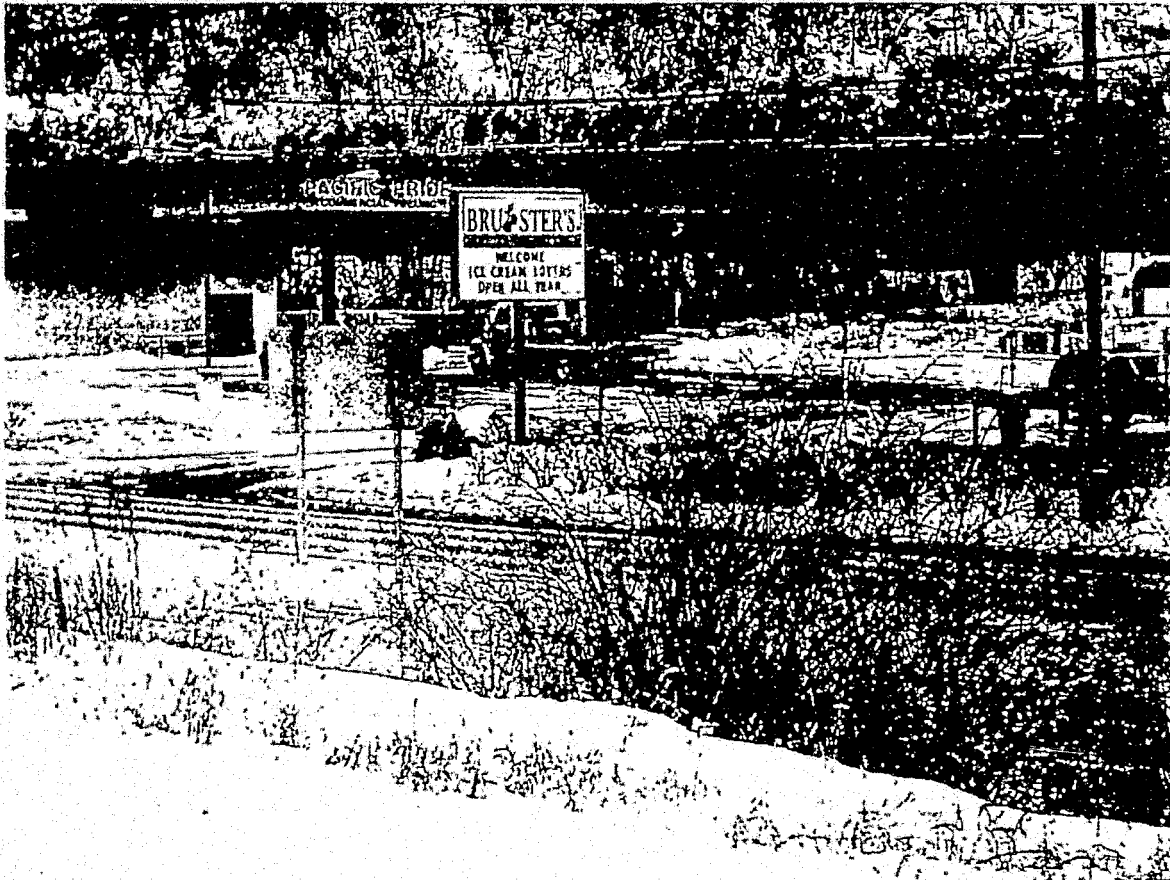


EXHIBIT  
7B

C-200 30526  
11/24/04  
Pg 0.7

picture 153.jpg (2048x1536x24b jpeg)

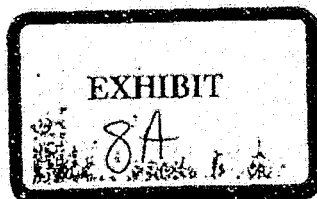
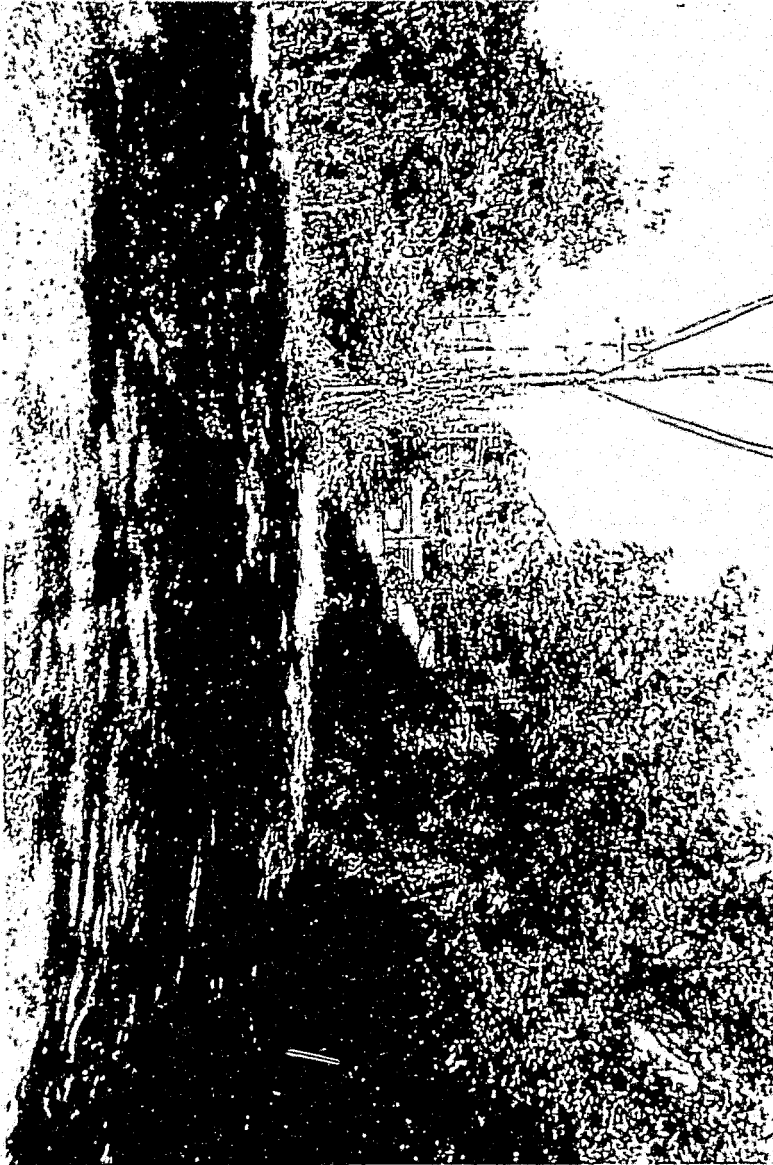
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EXHIBIT  
7C

C-20030526  
1/29/04  
Pg 2.7

OVERSIZED  
DOCUMENT(S)



C-20030526  
1/29/04  
Ry A. O.J.

OVERSIZED  
DOCUMENT(S)

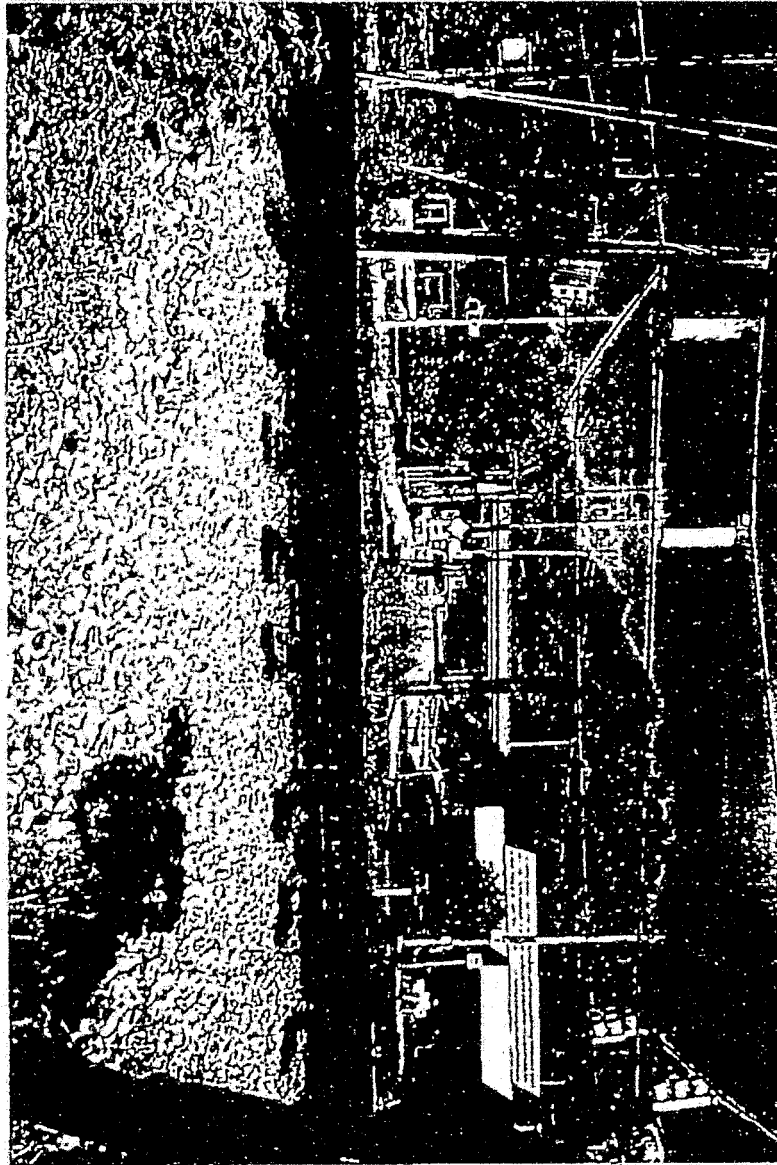


EXHIBIT  
8B

Q-20030526  
1/29/04  
Pg. 22.

picture 136.jpg

**OVERSIZED  
DOCUMENT(S)**



EXHIBIT  
80

C-200 30526  
1/24/04  
Pgh. A.J.

OVERSIZED  
DOCUMENT(S)

picture 135.jpg

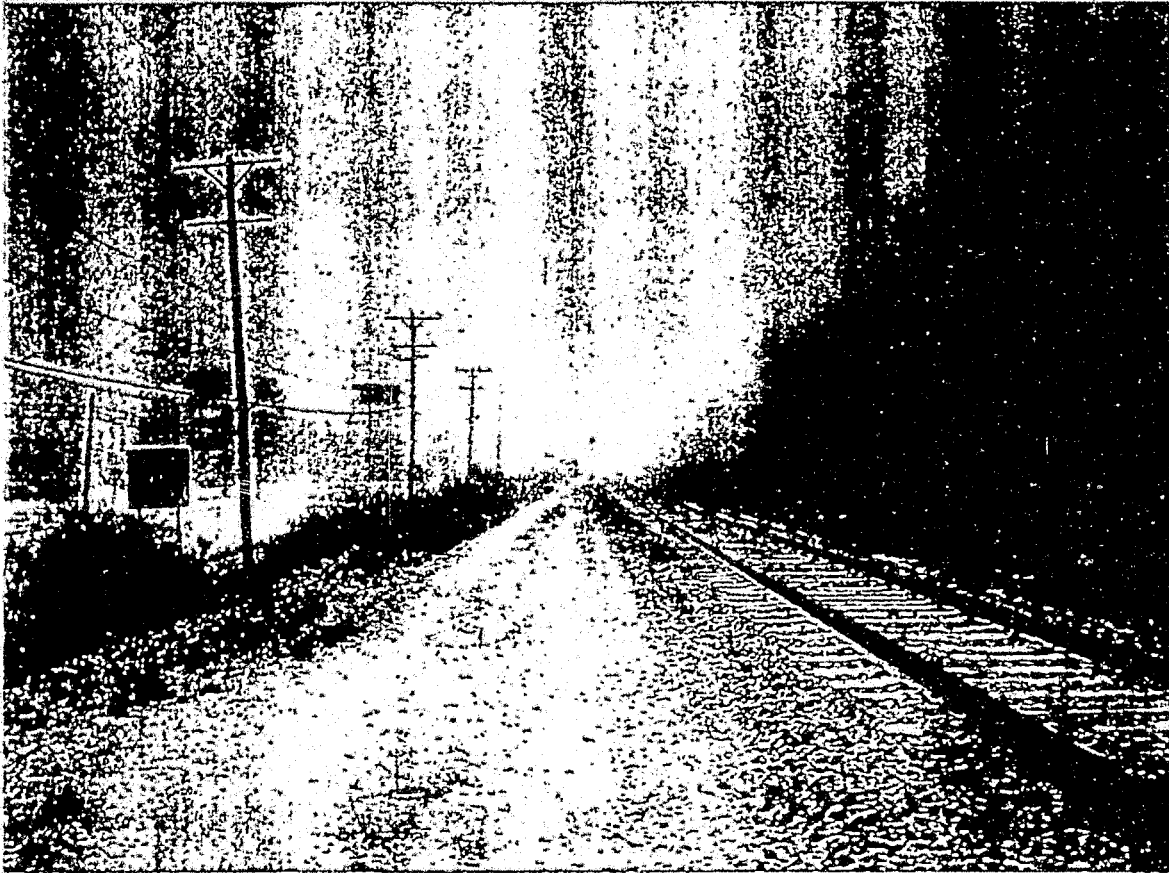
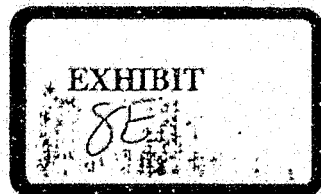
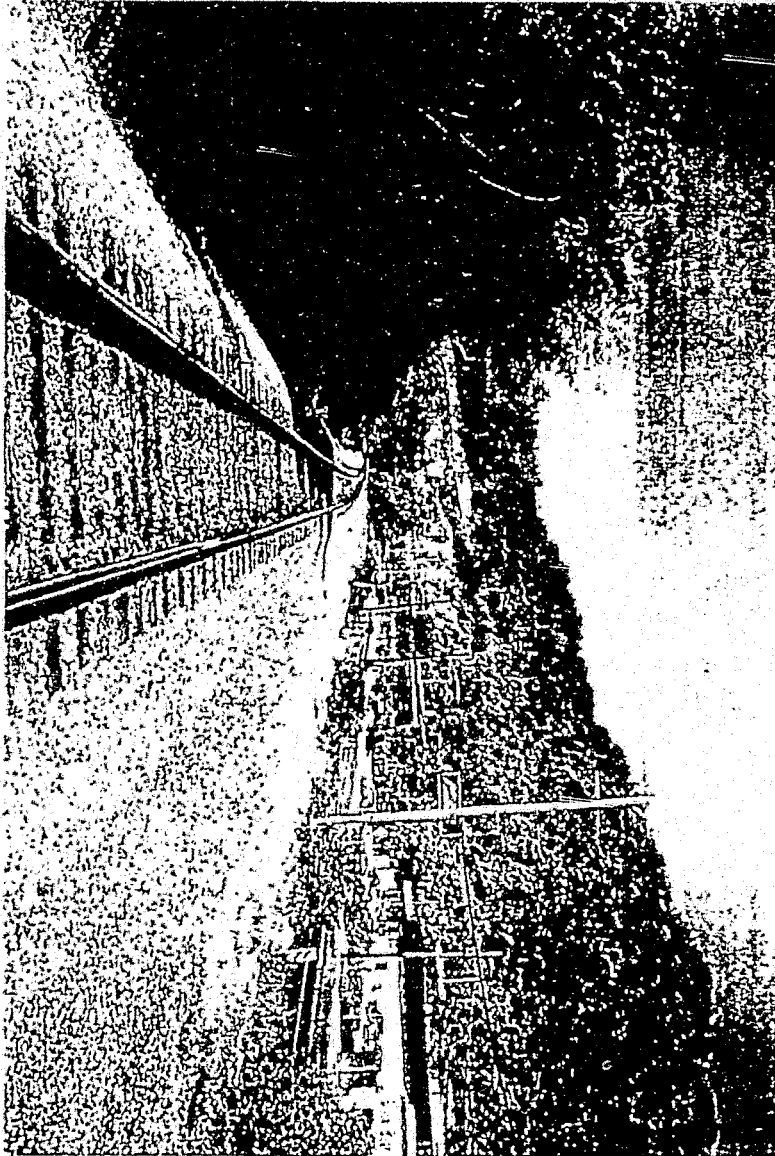


EXHIBIT  
80

C-200 30526  
1/31/04  
Pym a.7

OVERSIZED  
DOCUMENT(S)



C-200 30526  
1/29/04  
P/L A.J.

OVERSIZED  
DOCUMENT(S)

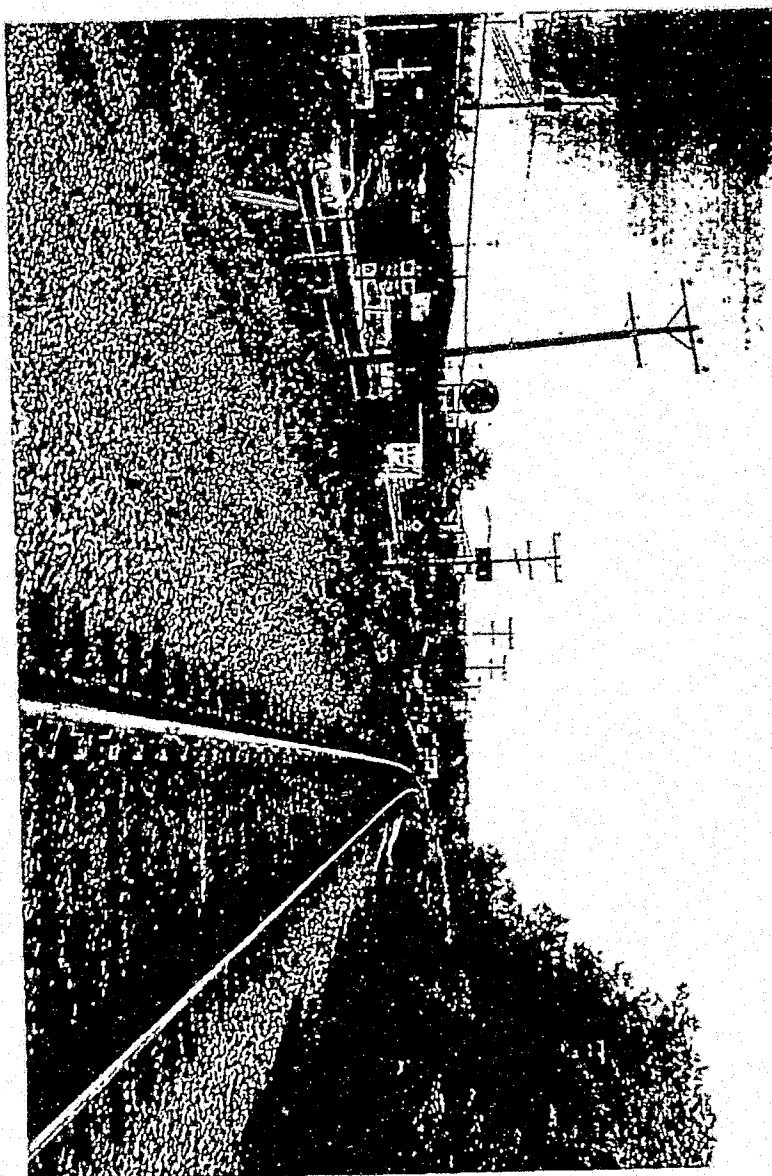


EXHIBIT  
8F

C-20030526  
1/29/04  
Pittsburgh, Pa.

picture 131.jpg (1360x)

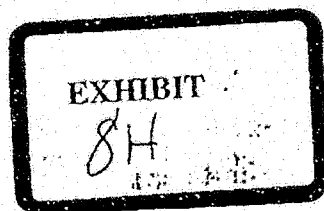
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DOCUMENT(S)**



EXHIBIT  
8G

C-20030526  
11/29/04  
Pg. 9.J.

OVERSIZED  
DOCUMENT(S)



C-20030526  
11/29/04  
Pgk a.2

OVERSIZED  
DOCUMENT(S)

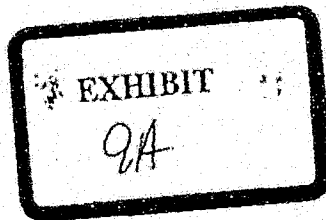


EXHIBIT  
8I

C-200 30526  
1/39/04  
Pgh. A.J.

OVERSIZED  
DOCUMENT(S)

picture 132.jpg (1:



C-20030536  
11/29/04  
Pzh a.j.

OVERSIZED  
DOCUMENT(S)

pictura 121.jpg (1360)



EXHIBIT  
90

C-20030526  
1/29/04  
Pzh O.J.

OVERSIZED  
DOCUMENT(S)

picture 099.jpg (13)



EXHIBIT  
9C

Q-50030526  
11/29/04  
Pg. 0.7.

OVERSIZED  
DOCUMENT(S)

picture 172.jpg (20

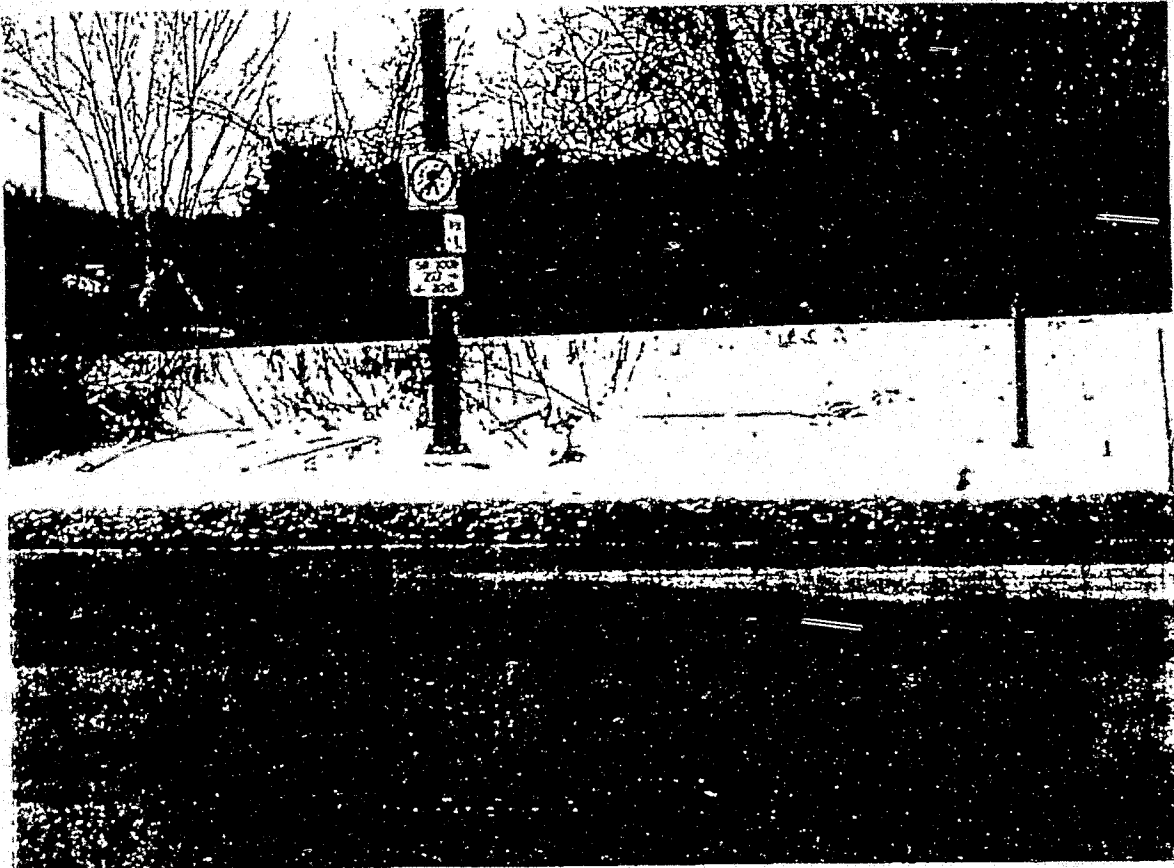


EXHIBIT  
10A

C-20030536  
1/24/04  
D. J. A. J.

OVERSIZED  
DOCUMENT(S)

picture 134.jpg (136



EXHIBIT  
10B

C-20030526  
1/29/04  
Pgt. A.J.

OVERSIZED  
DOCUMENT(S)

picture 147.jpg (

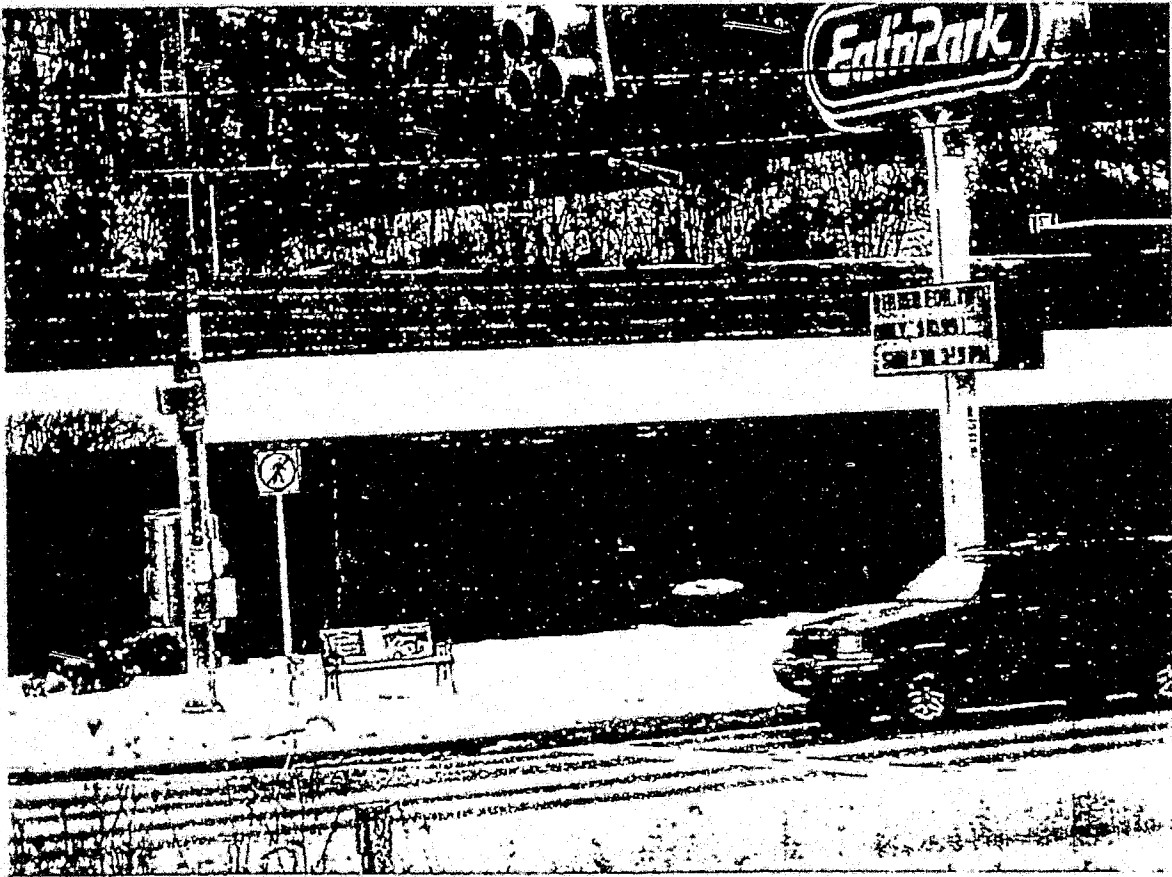


EXHIBIT  
100

C-20030526  
1/29/04  
P. J. a. J.

# ZONING ORDINANCE

## HARMAR TOWNSHIP

ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 331

ADOPTED NOVEMBER 17, 1999

PREPARED BY:  
MALCOLM STRACHAN, PLANNING CONSULTANT  
AND THE HARMAR TOWNSHIP  
PLANNING COMMISSION

EXHIBIT

11

C-20030526  
7/29/04  
Bk. A.J.



1897

Scale 1:100 = 70' Surveyed

OVERSIZED DOCUMENT(S)

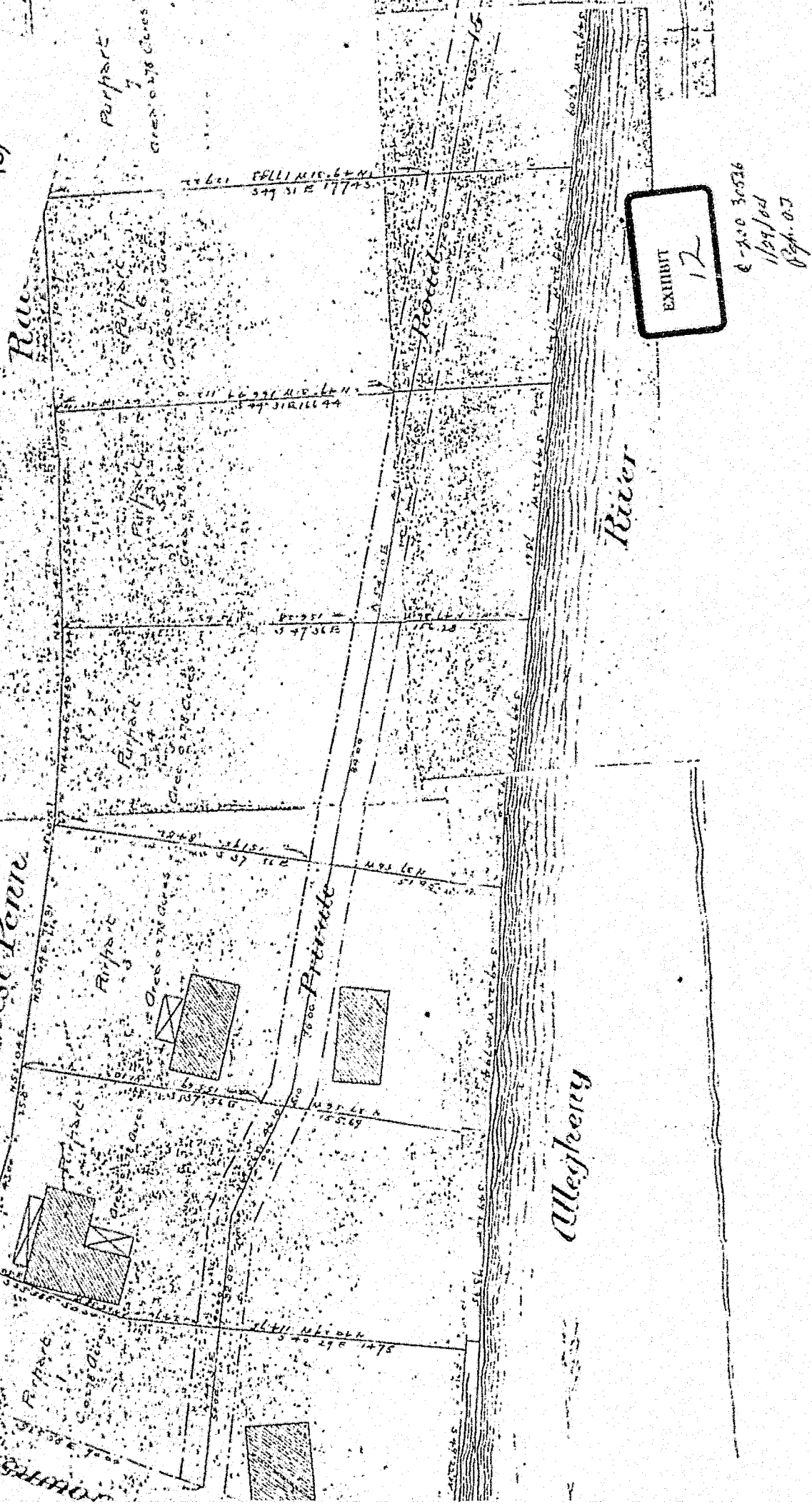


EXHIBIT 12

E-200 30536  
1/29/04  
Bgh. 03

PETITION OPPOSING ELIMINATION OF PEDESTRIAN RAILROAD CROSSING

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105-3265

THE ATTACHED LETTER FROM NORFOLK SOUTHERN RAILROAD TO HARMAR TOWNSHIP GIVES CAUSE FOR THIS PETITION TO CIRCULATED AND SIGNED.

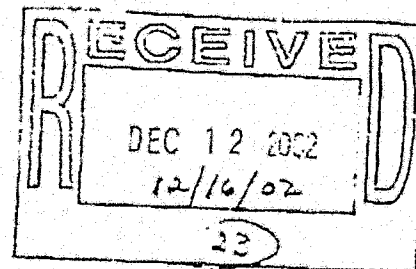
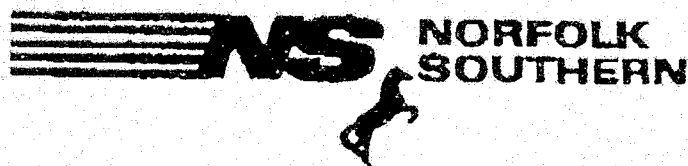
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NAME (SIGN) PRINT NAME ADDRESS (STREET, CITY AND ZIP CODE)

- Robert W. Seibert Jr* ROBERT W. SEIBERT JR 22 DENNY EST Pgh PA 15
- Leo Chini* Leo Chini 1211 FREEPORT RD CHANDLER 13
- Stanley L. Malak* STANLEY L. MALAK 15 DOMINICI LN, CHESWICK, PA 15
- Thomas J. Burkhart* THOMAS J. BURKHART ONE HARBORVIEW DR CHESWICK, PA
- Ronald W. Smith* Ronald W. Smith 2514 WENZEL DRIVE PITTSBURGH, PA 15233
- James L. Jump* James L. Jump 2542 WENZEL AVE. HARMAR, Pa.
- Joe Krason* Joe Krason 2542 WENZEL AVE APT-1 Pgh PA 15238
- Joseph Robinson* JOSEPH ROBINSON 222 MEADOWVALE DR. CHESWICK, PA 150
- Janey Ratz* JANAY RATZ 1481 11<sup>TH</sup> AVE. NATRONA HTS PA 15065
- Thomas Kelly* THOMAS KELLY 14 MEADOWVALE DR. CHESWICK PA 15029
- W. T. Rosko Jr* W. T. ROSKO JR 846 PALMER ST. HARMAR PA 15049
- Dorales J. Frazer* DORALES J. FRAZER 2516 WENZEL DR Pgh PA 15233
- Non Marchione* NON MARCHIONE 4623 BANCROFT ST Pgh PA 15201
- W.M. Weigs* W.M. WEIGS 2818 WENZEL DR Pgh PA 15238
- Steve Hahner* STEVE HAHNER 447 MARION AVE SPRINGDALE, PA 15144
- Carl & Linda Chumick* CARL & LINDA CHUMICK 1090 N BLUE DR New Kensington
- Thomas Howard* THOMAS HOWARD 441 GUYS RUN RD 15238

EXHIBIT  
14

c-20030526  
11/29/04  
Pgk. a. j.



December 13, 2002

Michael Liberati, Township Secretary  
Harmar Township  
701 Freeport Road  
Cheswick, Pa. 15024

Dear Mr Liberati,

This is in reference to your letter dated November 12, 2002 regarding the pedestrian crossing near Guys Run Road in Harmar Township.

We've requested that our Law Department prepare an application for abolition of the subject crossing.

The PUC will advise all parties when further consideration is in order.

Sincerely

Terry Sullivan  
Assistant Division Engineer

425 Holiday Drive - Suite 301  
Pittsburgh, Pa. 15220

PETITION OPPOSING ELIMINATION OF PEDESTRIAN RAILROAD CROSSING

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105-3265

THE ATTACHED LETTER FROM NORFOLK SOUTHERN RAILROAD TO HARMAR TOWNSHIP GIVES CAUSE FOR THIS PETITION TO CIRCULATED AND SIGNED.

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NAME (SIGN) PRINT NAME ADDRESS (STREET, CITY AND ZIP CODE)

James W. Anderson <sup>JAMES W.</sup> ~~ANDERSON, JR~~ 2524 WENZEL DR PGH, PA 15238-1422

James B. Anderson JAMES B ANDERSON (OWNER OF ABOVE)

Lilisa Sobien Arlisa Sobien 874 Progress St Pgh PA 15212

Mary Brangan Mary Brangan 1530 Spruce St Cheswick, PA 15024

John Grinder John Grinder 293 Coffin St Springdale, PA 15144

Dilfred Pampin DILFRED PAMPIN 1609 MONROE ST, P.G.H. PA 15211

Kathy Wilton 743 Gant St Springdale 15144

Yvonne Zarned 209 S Atlantic Ave. Cheswick, Pa 15024

Paul J. Dallas 316 Stonybrook Drive Cheswick Pa 15024

Joseph Corral 433 Coffin St Springdale, Pa ) 5

Deak Remaley <sup>DEAK REMALEY</sup> 700 PATRIOT AVE SPRINGDALE 15144

Ernest Wingo 202 Allegheny Ave Cheswick Pa 15024

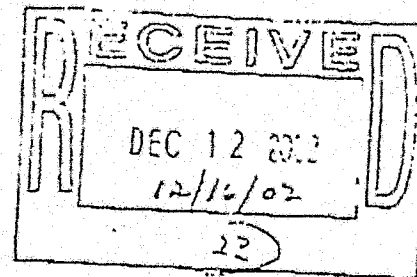
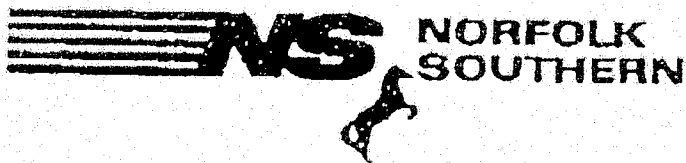
Mr Joseph Rowson 421 Butler St Springdale Pa 15144

Larry Sigler 730 Brookland Rd Pgh PA 15236

Kurt Trumble 128 Lyenier Ct. New Kensington, PA 15068

Patrick Trumble PATRICK TRUMBLE 700 Ave Cur Blvd. Pittsburgh, PA 15202

Joel B. Anderson Joel B Anderson 347 Butler Street Springdale, Pa 15144



December 13, 2002

Michael Liberati, Township Secretary  
Harmar Township  
701 Freepor Road  
Cheswick, Pa. 15024

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Sincerely

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Assistant Division Engineer

425 Holiday Drive - Suite 301  
Pittsburgh, Pa. 15220

PETITION OPPOSING ELIMINATION OF PEDESTRIAN RAILROAD CROSSING

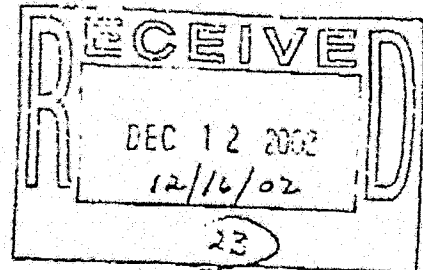
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105-3265

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NAME (SIGN) . PRINT NAME ADDRESS (STREET, CITY AND ZIP CODE)

- Margaret Rosko M.O. Rosko 846 Orchard St, Harwick PA 15139
- ~~Jim Con~~ Chris Conner 2521 Wenzel Dr Harmar
- Ronald N. ... 1037 KEEVE ST Springdale Pa 15144
- Chuck Henderson Pch ST Springdale Pa
- Darlene Walters Pitta St Springdale
- Wade Lee Wolf 60 Werners Camp Rd Pgh 15235
- Frank Galore 362 Locust Hill Rd. Cheswick
- Ann Meigs C. ANN MEIGS 2518 WENZEL DR, HARMAR 15235
- Michael J. Potyk MICHAEL J. POTYK 320 FINNIN RD. NEW KEN. 15110
- ~~101 Cedar Street Chrs.~~
- Jane Wanda June Wanda PO. Box 114 Verona PA 15147
- Russells Anderson 139 KAWLIHS RD RD. Pgh PA 15235
- Bill Clark (GHI) 401 W 9th Ave
- John Clark 73 Werners Camp 15234
- Wanda J. ... 73 Werners Camp 15234
- Darlene Walters 115 CRAZAR 2 LANE TARRANT 15084
- Richard W. Prankin 2501 WENZEL DR Pgh PA 15235



December 13, 2002

Michael Liberati, Township Secretary  
Harmar Township  
701 Freeport Road  
Cheswick, Pa. 15024

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Sincerely

A handwritten signature in black ink, appearing to read "Terry Sullivan".

Terry Sullivan  
Assistant Division Engineer

425 Holiday Drive - Suite 301  
Pittsburgh, Pa. 15220

PETITION OPPOSING ELIMINATION OF PEDESTRIAN RAILROAD CROSSING

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105-3265

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NAME (SIGN) PRINT NAME ADDRESS (STREET, CITY AND ZIP CODE)

James A. Kiehl JANKIELTY 715 OLDMILL RD, PGH, PA 15238

Georgina Kiehl GEORGINA KIEHL 2534 WENZEL DR, PGH, PA 15238

Amy Oleson Amy Oleson 2536 WENZEL DR PGH PA 15238

MARGARET OLESON Margret Oleson 2570 WENZEL DR PGH, PA 15238

Monique Lewis MARCENE LEWIS 2532 WENZEL DR PGH PA 15238

Charles C. Oleson 715 OLD MILL RD PGH, PA 15238

Larry Oleson Larry Oleson 2570 Wenzel Dr Pgh PA 15238

Raymond C. Lewis Jr 2532 Wenzel Dr PGH PA 15238

Carol Burrows 2532 Wenzel Dr Pgh Pa 15238

William A. Meigs W'AM MEIGS 2518 Wenzel Dr 15238

Robert Van Rosten 4208 ROSTMAN ALLEN PARK PA 15238

Frank Galera 362 Locust Hill Rd Cheswick

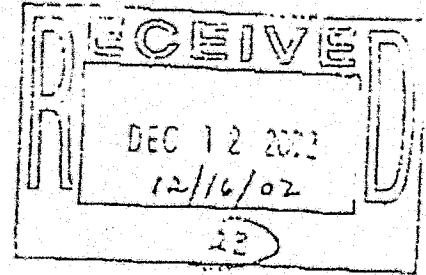
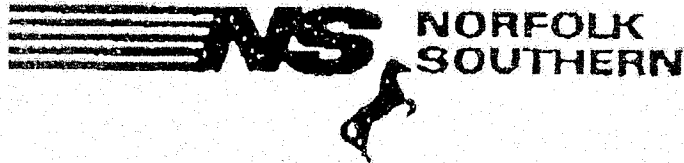
Eric Lewellen ERIC LEWELLEN 1327 PITTSBURGH ST, CHESWICK PA 15024

Eric Lewellen Eric Lewellen " " " "

Paul Anderson 961 Peach City Dr Monaca PA 15746

Frank Milk Frank Milk 229 Edgewood Dr Summer 16055

Ben D. Dyck -341 COLFAX ST SPR 10A 151



December 13, 2002

Michael Liberati, Township Secretary  
Harmar Township  
701 Freeport Road  
Cheswick, Pa. 15024

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Sincerely

Terry Sullivan  
Assistant Division Engineer

425 Holiday Drive - Suite 301  
Pittsburgh, Pa. 15220

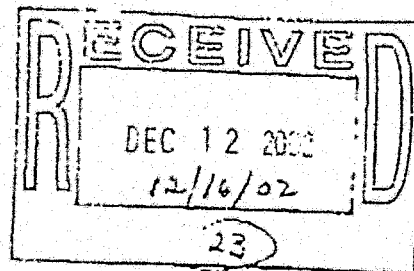
PETITION OPPOSING ELIMINATION OF PEDESTRIAN RAILROAD CROSSING

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105-3265

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NAME (SIGN)	PRINT NAME	ADDRESS (STREET, CITY AND ZIP CODE)
Joe Fogle	JOE FOGLE	928 MAIN ST HARWICK PA 15044
<i>[Signature]</i>	Edna Brasnyan	2501 Wenzel Av., Harmarville, Pgh. Pa. 15215
<i>[Signature]</i>	John Wenzel	2521 WENZEL Drive Harmarville, PA 15115
Charles R. Roth	CHARLES R. ROTH	750 6th St CARMON PA 15139
<i>[Signature]</i>	Lamar B. Andrews	129 BUCKNELL DR. SPRINGDALE, PA 15143
<i>[Signature]</i>	John Schilling	7313 1/2 BUTLER ST., PITTSBURGH, PA. 15206
<i>[Signature]</i>	Alvin [unclear]	56 Wood St Matrona Pa
<i>[Signature]</i>	Bob Goschler	1144 Butler Rd Springdale, PA 15144
<i>[Signature]</i>	Rose M Neathy	323 S Home Ave Pittsburgh PA 15202
<i>[Signature]</i>	Rosemarie Burrows	Rosemarie Burrows 435 Stanford Avenue, Pgh, Pa 15229
<i>[Signature]</i>	Douglas Berwirth	5 Pringle PA 15149
<i>[Signature]</i>	Victor T. Castagna	208 Waverly Pgh PA 15222
Joe Fogle	JOE FOGLE	928 MAIN ST HARWICK PA 15044
<i>[Signature]</i>	Karen Ambrose	30 Joseph St Cheswick 15015



December 13, 2002

Michael Liberati, Township Secretary  
Harmar Township  
701 Freeport Road  
Cheswick, Pa. 15024

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Sincerely

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Terry Sullivan  
Assistant Division Engineer

425 Holiday Drive - Suite 301  
Pittsburgh, Pa. 15220

PETITION OPPOSING ELIMINATION OF PEDESTRIAN RAILROAD CROSSING

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105-3265

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NAME (SIGN) PRINT NAME ADDRESS (STREET, CITY AND ZIP CODE)

JAY HORN 2530 WENZEL DR. P.O. PA 15238-142  
*Jay Horn*

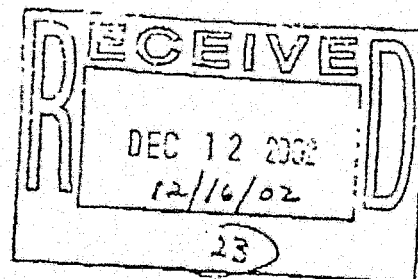
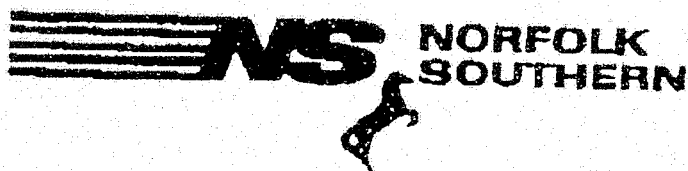
*Jeanette M Burkhardt SANDRA BURKHART 2526 WENZEL DR. P.O. PA 15238*

*Kenneth Burkhardt 2526 WENZEL DR. P.O. PA 15238*

*Theresa Alston 2518 WENZEL DR. P.O. PA 15238*

*Theresa Alston 2525 WENZEL DR. P.O. PA 15238*

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December 13, 2002

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Harmar Township  
701 Freeport Road  
Cheswick, Pa. 15024

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Terry Sullivan  
Assistant Division Engineer

425 Holiday Drive - Suite 301  
Pittsburgh, Pa. 15220

PETITION OPPOSING ELIMINATION OF PEDESTRIAN RAILROAD CROSSING

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
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NAME (SIGN) PRINT NAME ADDRESS (STREET, CITY AND ZIP CODE)

*Edward J. Corbett* EDWARD J. CORBETT 355 STRATFORD AV PGH 15232

*Ralph Prosnick* RALPH PROSNICK 2501 HENRIEL BL. 15232

*James E. Brown* JAMES E. BROWN 1025 FRISVOLD RD CRYSTAL

*Bernina Mazon* BERNINA MAZON 361 COLFAX ST

*Lois Fry* LOIS FRY 110 PEACHTREE LANE TARENTUM PA 15084

*David E. Fry* DAVID E. FRY 110 PEACHTREE LANE TARENTUM PA 15084

*Eleanor Prosnick* ELEANOR PROSNICK 2501 HENRIEL BL., PITTSBURGH, PA 15232

*Kathy Prosnick* KATHY PROSNICK 152 THE DEAN AVE, CHESTER, PA

*Charles J. Prosnick* CHARLES J. PROSNICK 52 MC KEAN BL CHESTER PA 15024

*Michael J. Siciliano* MICHAEL J. SICILIANO 3520 HENRIEL BL HARRISBURG

*Darlene E. Cable* DARLENE E. CABLE 2501 HENRIEL BL HARRISBURG, PA

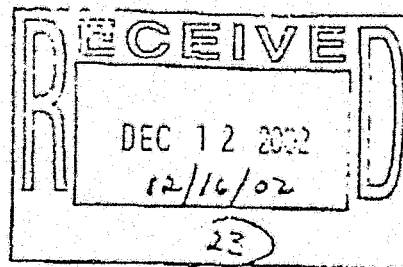
*Paul J. Lovich* PAUL J. LOVICH 123 REPUBLIC AVE TACOMA PA 15051

MICHAEL MCMEYERS 449 GUYS RUN HARMAR 15238

*David J. Harmon* DAVID J. HARMON 507 GUYS RUN RD HARMAR 15238

*Kimberly Prosnick* KIMBERLY PROSNICK 110 Hill Ave CHESTER PA 15024

*Janet Prosnick* JANET PROSNICK 116 Hill Ave CHESTER PA 15024



December 13, 2002

Michael Liberati, Township Secretary  
Harmar Township  
701 Freeport Road  
Cheswick, Pa. 15024

Dear Mr. Liberati,

This is in reference to your letter dated November 12, 2002 regarding the pedestrian crossing near Guys Run Road in Harmar Township.

We've requested that our Law Department prepare an application for abolition of the subject crossing.

The PUC will advise all parties when further consideration is in order.

Sincerely

A handwritten signature in black ink, appearing to read 'Terry Sullivan'. The signature is written in a cursive style and is positioned above the typed name.

Terry Sullivan  
Assistant Division Engineer

425 Holiday Drive - Suite 301  
Pittsburgh, Pa. 15220

441-K-90  
BLOCK & LOT IND  
BEEB REGISTRY  
George D. Brown  
Custodian  
DATE: 6/20/55

441-K-90 ✓

# Deed of Indenture

20th day of June 1955

Mary F. PRASNIKAR, widow, of the Township of Harmar, County of Allegheny and Commonwealth of Pennsylvania,

(hereinafter called "Grantor") and

RALPH W. PRASNIKAR,

(hereinafter called "Grantee"):

Witnesseth, that the said Grantor in consideration of ONE DOLLAR AND NO/100 (\$1.00) Dollar,

paid to the Grantor by the Grantee do es. grant, bargain, sell and convey unto the said Grantee and assigns, his heirs

All that certain parcel of land situate in the Township of Harmar, County of Allegheny and Commonwealth of Pennsylvania, being all of lot number 90 in Block Number 441K according to the new Lot, Block Number system which became effective January 2, 1951, bounded and described as follows:

BEGINNING at a point where the southeasterly line of land of Mary F. Prasnikar meets the southwesterly line of Guys Run Road;

EXTENDING from said beginning point the following six courses and distances: (1) South 27° 02' East, along said line of Guys Run Road, 57.02 feet to the northwesterly line of land now or formerly of John Middlemas; thence (2) South 67° 47' West, by the last mentioned land and by land now or formerly of Harmar Coal Co., 115.00 feet to an angle point; thence (3) South 66° 23' 20" West, by the last mentioned land, 533.42 feet to a corner of the last mentioned land; thence (4) North 53° 47'

C-200-30526  
1129/04  
pca 07.

EXHIBIT  
B

East, by remaining land of Penn Central Transportation Company, 297.00 feet to a corner of other land now or formerly of Harmar Coal Co.; thence (5) South 36° 47' East, by the last mentioned land now or formerly of Harmar Coal Co., 16.27 feet to another corner thereof; and thence (6) North 65° 33' East, by the last mentioned land, now or formerly of Harmar Coal Co. and by said land of Mary P. Prasnikar, 351.18 feet to the place of beginning.

CONTAINING 0.641 of an acre.

SUBJECT to coal, mineral and mining rights etc. as set forth in prior deeds of record.

SUBJECT to all terms of a, b, c and d as more particularly set forth in Deed Book Volume 5331, page 405.

BEING the same property which George P. Baker, et al, by their deed dated March 28, 1974 and recorded in the Office of the Recorder of Deeds of Allegheny County in Deed Book Volume 5331, page 405, granted and conveyed unto Mary P. Prasnikar, widow, grantor herein and party of the first part hereto.

BEING Block 441-K, Lot 90 in the Deed Registry Office.

NO DEED TRANSFER STAMPS necessary because transfer is from mother to son.

MADE in accordance with a survey of Alpha Engineering Co.  
Lower Burrell, PA 15068

with the appertanances: **To Have and To Hold** the same to and for the use of the said Grantee

his heirs and assigns

forever, And the Grantor for herself, her

and assigns hereby covenant and agree that she will WARRANT GENERALLY the property hereby conveyed.

NOTICE—THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL DOES NOT MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1967, P. L. 934, as amended, and is not intended as notice of unrecorded instruments, if any.]

Witness the hand and seal of the said Grantor

Witness:

*Mary F. Prasnikar*  
Mary F. Prasnikar



**NOTICE** THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

WITNESS:

*C. J. Jacques*

*Ralph N. Prasnikar*  
Ralph N. Prasnikar

Commonwealth of Pennsylvania }  
County of Allegheny } ss.

On this the 20th day of June, A.D. 1985

before me a Notary Public the undersigned officer, personally appeared Mary F. Prasnikar, widow known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

*Charles J. Jacques*  
Notary Public

(Title of Officer)



CHARLES J. JACQUES, Notary Public  
ALLEGHENY COUNTY  
COMMISSION EXPIRES APRIL 22, 1989  
Member, Pennsylvania Association of Notaries

Commonwealth of Pennsylvania }  
County of \_\_\_\_\_ } RR.

On this \_\_\_\_\_ day of \_\_\_\_\_  
A.D. 19 \_\_\_\_\_, before me  
in and for said \_\_\_\_\_

came the above named \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
before me  
the undersigned officer, personally appeared \_\_\_\_\_

known to me (or satisfactorily proven) to be the  
person whose name \_\_\_\_\_ subscribed to the  
within instrument and acknowledged that he  
executed the same for the purposes therein con-  
tained.

In Witness Whereof, I hereunto set my hand and  
official seal.

and acknowledged the foregoing Indenture to be  
act and deed, to  
the end that it may be recorded as such.

Witness my hand and

seal



My Commission Expires \_\_\_\_\_

Title of Officer.

My Commission Expires \_\_\_\_\_

Certificate of Residence

I, \_\_\_\_\_ do hereby certify that  
precise residence is 541 Willow Street, Springdale, PA 15144  
Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 1985

C. J. Jacques, Jr.

JUN 24 85 53672

Recorded *Harman* Number



DEED  
REGISTRY  
Vol. \_\_\_\_\_  
No. 26 85  
COUNTY OF ALLEGHENY, PA

MARY F. PRASHNIKAR, WIDOW

*David Harbo*

RALPH W. PRASHNIKAR,

541 Willow St  
Springdale, PA 15144

TRANSFER TAX

EXPENSE DEED

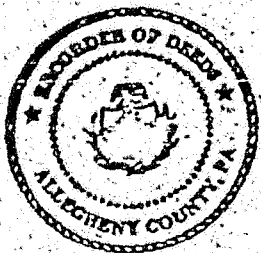
Attorneys at Law  
2125 Freeport Road  
P.O. Box 265  
Natrona Heights, PA 15065

*No Title Ex*

P.O. NO. 66, Law Book Publishers  
617 Fourth Street, Pittsburgh, Pa. 15219

7 b8 NTS

Commonwealth of Pennsylvania }  
County of Allegheny } RR.



Recorded on this 24th day of June

A.D. 19 85, in the Recorder's office of the said County, in Deed Book,  
Volume 7103, page 550

Given under my hand and the seal of the said office, the day and year  
aforesaid.

*Michael J. Peter Keckler*  
Recorder.

RECORDER OF DEEDS  
ALLEGHENY COUNTY.

JUN 24 10 17 AM '85

OVERSIZED DOCUMENT(S)

D-300 30326  
1/29/54  
H. M.

14  
EXHIBIT

HARMARVILLE



THE PENNSYLVANIA RAILROAD COMPANY  
 CENTRAL REGION  
 WESTERN PA. DIV. CONEMAUGH DIV.  
 HARMARVILLE, PA.  
 LEASE OF PROPERTY TO JOSEPH H. MEYERS  
 PITTSBURGH, PA. JUNE 6, 1950  
 SCALE - 1"=100' 12996

LEGEND  
 PROPERTY TO BE LEASED

DATE OF RECORD  
 DATE OF SURVEY